

*United States Court of Appeals
for the Second Circuit*



APPENDIX

R/S

74-1001

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 74-1001

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA,

Petitioner,

- and -

PENSION FUND OF NEW YORK CITY TRUCKING INDUSTRY LOCAL 807,

Intervenor,

- v. -

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER AND A CROSS APPLICATION
FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

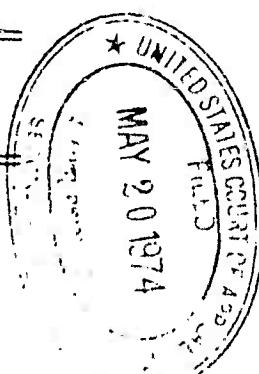
JOINT APPENDIX

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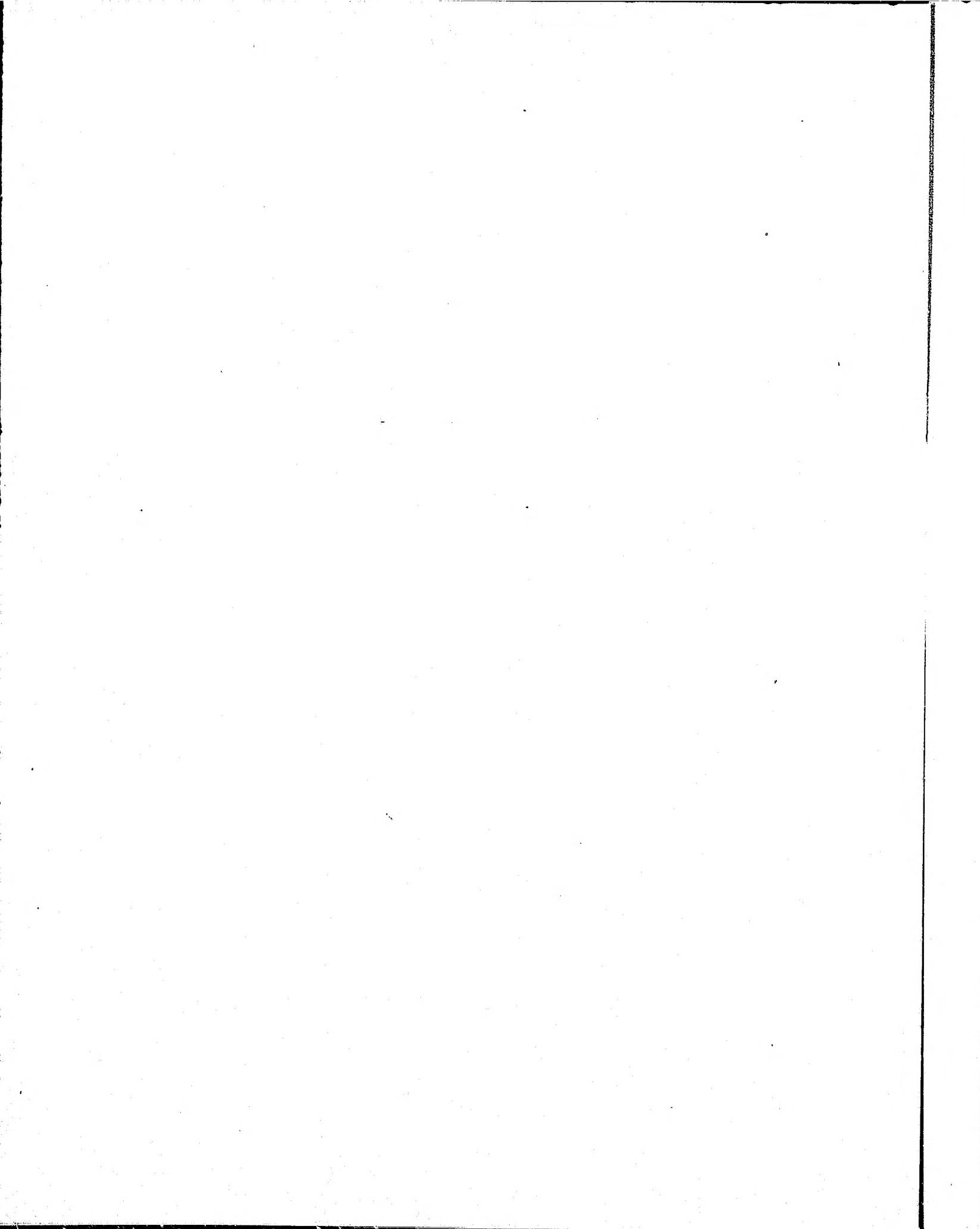
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Chronological List of Relevant Docket Entries

Case Nos. 29-CB-1352-1, -2, -3

In the Matter of
TRUCK DRIVERS LOCAL UNION No. 807, I.B.T.

| DATE | PROCEEDINGS |
|----------|--|
| 10.19.72 | Charge filed in 29-CB-1352-1 |
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Chronological List of Relevant Docket Entries

| DATE | PROCEEDINGS |
|----------|--|
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| 5. 1.73 | Hearing Closed |
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**Order Consolidating Cases, Complaint
and Notice of Hearing**

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29
Case Nos. 29-CB-1352-1, 29-CB-1352-2
and 29-CB-1352-3

TRUCK DRIVERS LOCAL UNION No. 807, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,

—and—

GEORGE LIGHTFOOT, An Individual,

—and—

ANTHONY PALUMBO, An Individual,

—and—

TONY GRECO, An Individual,

—and—

WHITE ROCK BEVERAGES INC.,
Party to the Contract,

—and—

PENSION FUND OF NEW YORK CITY
TRUCKING INDUSTRY LOCAL 807,
Party in Interest.

It having been charged in Case No. 29-CB-1352-1 by
George Lightfoot, an individual, in Case No. 29-CB-1352-2

*Order Consolidating Cases, Complaint
and Notice of Hearing*

by Anthony Palumbo, an individual, and in Case No. 29-CB-1352-3 by Tony Greco, an individual, herein called Lightfoot, Palumbo, and Greco respectively, that Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations—Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations—Series 8, as amended, Section 102.15 hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The Charge in Case No. 29-CB-1352-1 was filed by Lightfoot on October 19, 1972, and served by registered mail upon Respondent on or about October 19, 1972.

(b) The Charge in Case No. 29-CB-1352-2 was filed by Palumbo on October 19, 1972, and served by registered mail upon Respondent on or about October 19, 1972. ☐

*Order Consolidating Cases, Complaint
and Notice of Hearing*

(c) The Charge in Case No. 29-CB-1352-3 was filed by Greco on October 19, 1972, and served by registered mail upon Respondent on or about October 19, 1972.

2. White Rock Beverages Inc., is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware.

3. (a) White Rock Beverages Inc. is a wholly owned subsidiary of White Rock Corporation.

(b) White Rock Beverages Inc. and White Rock Corporation, herein together referred to as White Rock, are, and at all times material herein have been, affiliated businesses with common officers, directors and operators and constitute a single integrated business enterprise; the said directors and operators formulate and administer a common labor policy for the aforementioned companies, affecting the employees of said companies.

4. At all times material herein White Rock Corporation has maintained its principal office and sole plant in the City of Boston and State of Massachusetts where it is, and has been at all times material herein, engaged in the manufacture, sale and distribution of beverages and related products.

5. During the past year, which period is representative of its annual operations generally, White Rock Corporation, in the course and conduct of its business operations, manufactured, sold and distributed at its Boston, Massachusetts place of business, products valued in excess of

*Order Consolidating Cases, Complaint
and Notice of Hearing*

\$500,000, of which products valued in excess of \$50,000 were shipped from said place of business in interstate commerce directly to states of the United States other than the state in which it is located.

6. White Rock is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

7. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

8. On or about November 1, 1971, White Rock Beverages Inc. and Respondent executed, and since that date have maintained in effect and enforced a collective-bargaining agreement relating to hire, tenure, terms and conditions of employment of employees of White Rock Beverages Inc. at its Bronx, New York plant whereunder, *inter alia*, White Rock Beverages Inc. agreed to make contributions to the Pension Fund of the New York City Trucking Industry Local 807, herein called the Pension Fund, on behalf of employees at its Bronx plant.

9. At all times material herein since on or about February 28, 1972, the Rules and Regulations of the Pension Fund contained *inter alia*, the following provisions:

ARTICLE III—PENSION CREDITS

Section 1. PENSION CREDITS GENERALLY. Entitlement to a pension under this Plan is determined in part on the accumulation of Pension Credits. Pension Credits are granted

*Order Consolidating Cases, Complaint
and Notice of Hearing*

on the basis of employment covered by the Pension Fund. Credits are granted in quarter-year units. A Pension Quarter is defined as any period of three consecutive months starting August 1st, November 1st, February 1st or May 1st. A year of Pension Credits consists of any four quarters of Pension Credit.

Pension Credits shall be granted only as set forth in this Article.

There are two bases for securing Pension Credits for the period before September 1, 1950 and another basis for accumulating Pension Credits for the period on and after September 1, 1950. For the latter period, it is purely a question of a certain minimum amount of work in Covered Employment.

Section 2. PAST SERVICE.

- (a) It is recognized that it would be difficult for many, if not most, of the Employees to establish their periods of Covered Employment prior to January 1, 1937. Consequently, anyone who was a member of Local 807 prior to the period commencing January 1, 1937 may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 807 during this period. For this purpose, a Pension Quarter shall be credited if the Employee was a member for any part of the quarter. Pension Credit shall also be granted for any period of time that an employee can prove that he worked in covered employment through employer records.

*Order Consolidating Cases, Complaint
and Notice of Hearing*

10. By the terms of Article III, Section 2(a) of the Pension Fund's Rules and Regulations set forth above in paragraph 9 a preference is accorded in accumulating pension credits to employees who were members of Respondent prior to January 1, 1937 over employees who were not, or did not become, members of Respondent prior to January 1, 1937.
11. By the acts described above in paragraphs 9 and 10 and by each of said acts, Respondent restrained and coerced, and is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.
12. By the acts described above in paragraphs 9 and 10 and by each of said acts, Respondent caused and attempted to cause, and is causing and attempting to cause White Rock to discriminate against its employees in violation of Section 8(a)(3) of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and Section 2(6) and (7) of the Act.
13. The acts of Respondent described above in paragraphs 9 and 10, occurring in connection with the operations of White Rock described above in paragraphs 2 through 6, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

*Order Consolidating Cases, Complaint
and Notice of Hearing*

PLEASE TAKE NOTICE that on the 29th day of January, 1973, at 11:00 a.m. at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Consolidated Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 15th day of December, 1972.

SAMUEL M. KAYNARD
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

**Answer of Truck Drivers Local Union No. 807,
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 29

[CAPTIONS OMITTED]

Respondent, Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called "Respondent"), by its attorney J. Warren Mangan, submits this Answer to the Complaint, dated December 15, 1972, issued herein against Respondent.

As and for its Answer, Respondent alleges as follows:

First: Admits, upon information and belief, the allegations contained in paragraphs 1(a), (b), (c), 2, 3, 4, 5, 6, 7, 8 and 9 of the Complaint.

Second: Denies each and every allegation contained in paragraphs 10, 11, 12 and 13 of the Complaint.

*As and for a First Affirmative and Complete Defense
to the Complaint, Respondent Alleges:*

Third: That the Charge in Case No. 29-CB-1352-1, filed by George Lightfoot on October 19, 1972, was dismissed by the Regional Director on December 15, 1972. Charging Party appealed and the Office of the General Counsel denied that appeal on January 24, 1973.

*Answer of Truck Drivers Local Union No. 807,
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America*

Fourth: That the Charge in Case No. 29-CB-1352-2, filed by Anthony Palumbo on October 19, 1972, was dismissed by the Regional Director on December 15, 1972. Charging Party appealed and the Office of the General Counsel denied that appeal on January 26, 1973.

Fifth: That the Charge in Case No. 29-CB-1352-3, filed by Tony Greco on October 19, 1972, was dismissed by the Regional Director on December 15, 1972. Charging Party appealed and the Office of the General Counsel denied that appeal on January 24, 1973.

Sixth: That the allegations set forth in paragraphs 10, 11, 12 and 13 of the Complaint are completely removed from allegations which gave rise to Charges 29-CB-1352-1, 2 and 3. It is the Regional Director that is initiating this Complaint on his motion in violation of Section 10(b) of the Act. The Complaint should be dismissed since it is not supported by any Charge.

*As and for a Second Affirmative and Complete Defense
to the Complaint, Respondent Alleges:*

Seventh: That the alleged "preference" favoring members of Respondent prior to January 1, 1937 cannot be considered to be discriminatory in regard to hire, tenure or any term or condition of employment to encourage or discourage union membership, nor to restrain or coerce employees in the exercise of Section 7 rights; and it therefore cannot be said to violate Section 8(b)(1)(A) or (2) or Section 8(a)(3) of the Act.

*Answer of Truck Drivers Local Union No. 807,
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America*

*As and for a Third Affirmative and Complete Defense
to the Complaint, Respondent Allege:*

Eighth: The most creditable administrative basis available to the Trustees of the Pension Fund of the New York City Trucking Industry—Local 807 (Pension Fund) to confirm eligibility for past service credit prior to January 1, 1937 are union and employer records. Article III, Section 2(a) of the Pension Fund's Rules and Regulations provides that the Trustees "may", at their sole discretion give pension credit for that period that a pension applicant was a member of Respondent prior to January 1, 1937 and "shall" grant pension credit for that period that a pension applicant can prove that he worked in covered employment prior to January 1, 1937 through employer records. There being no presumption favoring membership in Respondent provided for in Article III, Section 2(a) of the Pension Fund's Rules and Regulations it cannot be said to violate Section 8(b)(1)(A) or (2) or Section 8(a)(3) of the Act.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed with prejudice.

Dated: Queens, New York
April 4, 1973

J. WARREN MANGAN
Attorney for Respondent
*Truck Drivers Local Union No. 807,
International Brotherhood of Team-
sters, Chauffeurs, Warehousemen and
Helpers of America*

[Certification of Service omitted in printing]

Excerpts From Transcript of Hearing

[1] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

REGION 29

Case Nos. 29-CB-1352-1, 29-CB-1352-2
and 29-CB-1352-3

In the Matter of:

TRUCK DRIVERS LOCAL UNION No. 807, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,

Respondent,

—and—

GEORGE LIGHTFOOT, an individual,

—and—

ANTHONY PALUMBO, an individual,

—and—

TONY GRECO, an individual,

—and—

WHITE ROCK BEVERAGES, INC.,

Party to the Contract,

—and—

PENSION FUND OF NEW YORK CITY TRUCKING INDUSTRY,
LOCAL 807,

Party in Interest.

Proceedings

National Labor Relations Board
16 Court Street
Brooklyn, New York 11201
Monday, April 30, 1973

The above-entitled matter came on for hearing, pursuant to notice, at 2:15 p.m.

B e f o r e :

[1A] BENJAMIN A. THEEMAN,
Administrative Law Judge.

A p p e a r a n c e s :

ALVIN P. BLYER, Esq., of Counsel to the General Counsel,
16 Court Street, Brooklyn, New York 11201.

J. WARREN MANGAN, Esq., 32-43 49th Street, Long Island
City, New York, New York 11103, *Attorney for
Respondent.*

ARTHUR LIBERSTEIN, Esq., One World Trade Center, New
York, New York, *Attorney for the Party in Interest.*

[3] PROCEEDINGS

Judge Theeman: On the record.

The hearing will be in order.

This is a formal hearing before the National Relations Board in the Matter of: Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and George Lightfoot, an individual, and Anthony Palumbo, an individual, and Tony Greco, an individual, and White Rock Beverages,

Offering of Exhibits

Inc., Party to the Contract, and Pension Fund of New York City Trucking Industry, Local 807, Party in Interest, Case Nos. 29-CB-1352-1, 29-CB-1352-2, and 29-CB-1352-3.

The Administrative Law Judge conducting this hearing is Benjamin A. Theeman.

All parties have been informed of the procedures at formal hearings before the Board by service of a statement of standard procedures with the complaint and notice of hearing.

* * * *

Will counsel and other representatives for the parties please state their appearances for the record.

For the General Counsel.

Mr. Blyer: Alvin P. Blyer, Counsel for the General [4] Counsel, 16 Court Street, Brooklyn, New York, 11241.

Mr. Mangan: J. Warren Mangan, Counsel for the Respondent, 32-43 49th Street, Long Island City, New York, 11103.

Mr. Liberstein: Arthur Liberstein, appearing for Party in Interest, Pension Fund of New York City Trucking Industry, Local 807. Our address is One World Trade Center, New York, New York, 10048.

* * * *

[5] Judge Theeman: On the record.

Before we introduce the—well, Mr. Blyer, will you please introduce the pleadings and other formal papers.

Mr. Blyer: Yes.

I would like to have marked for identification, the formal papers in this Matter.

Judge Theeman: They may be so marked as General Counsel's Exhibit #1 for identification..

Offering of Exhibits

(The above-mentioned was received and marked as General Counsel's Exhibit #1 for identification.)

Mr. Blyer: The formal papers include an index and description of formal documents from 1A through 1R.

The formal papers have been shown to Respondent and Party in Interest.

I believe there is no objection to their admission into evidence, at this time, your Honor.

I would like to offer them into evidence.

Mr. Mangan: There is no objection to the admission of the formal papers into evidence except that on reviewing same, I noticed that the dismissal letters for Lightfoot, Palumbo and Greco were not included as part of the formal papers.

I believe it would only be appropriate, since the charges are included, that the dismissal letters be included, as well.

[6] Judge Theeman: Mr. General Counsel?

Mr. Blyer: I have no objection, your Honor.

I have with me copies of those dismissal letters to the three parties.

It might be easier perhaps, instead of amending—

Judge Theeman: Why don't you put them in as Exhibits 2A, B and C?

Mr. Blyer: Okay.

Mr. Mangan: No objection.

Judge Theeman: Without objection, the dismissal letters of Lightfoot, Palumbo and Greco will be received in evidence as 2A, B and C, respectively.

(The above-mentioned was received and marked as General Counsel's Exhibits 2A, B and C into evidence.)

* * * * *

Offering of Exhibits

Mr. Blyer: I would like to offer the formal papers into evidence at this time, your Honor.

Judge Theeman: Any objection?

Mr. Mangan: No objection.

Mr. Liberstein: No objection.

Judge Theeman: All right.

The formal papers will be received into evidence.

[7] (The above-mentioned was received and marked as General Counsel's Exhibit #1 into evidence.)

Judge Theeman: With regard to Exhibits 2A, B and C, Mr. Blyer, I understand there was an appeal from the dismissal?

Mr. Blyer: Yes, your Honor.

Judge Theeman: And that appeal was denied?

Mr. Blyer: Yes, your Honor.

* * * * *

Judge Theeman: Is it your intention to put those letters into evidence?

Mr. Blyer: If necessary.

Mr. Mangan: I would certainly request that they be, your Honor.

Mr. Blyer: Do you want to look at them first before [8] we mark them?

Mr. Mangan: Yes.

Judge Theeman: Shall we mark those as 3A, B and C, respectively?

Mr. Blyer: Yes, your Honor.

(The above-mentioned was received and marked as General Counsel's Exhibits Nos. 3A and B for identification.)

* * * * *

Motions to Dismiss Complaint

[9] Mr. Mangan: Your Honor, at this time I respectfully request that the complaint in this matter be dismissed as to the Respondent Truck Driver's Local Union No. 807, as well as to the Party in Interest, in that Section 10B of the Act requires that there be a charge to support a complaint.

Based upon the documents that are in evidence, there is no charge supporting the complaint against the Respondent in this Matter or the Party in Interest.

Section 10B is clear that without that charge, the Board has no basis for proceeding.

The complaint should be dismissed at this time, your Honor.

Mr. Liberstein: As representing the Party in Interest, I join in the motion made by Mr. Mangan, and I, also, submit to you, Judge Theeman, that based upon the denial of the appeal taken by the charging parties from the Director of the Office of the Appeals, that on its face it states there having been no proof of any violation of the Act, that the Matter is now Res Judicata and they can't proceed on the complaint.

* * * * *

[10] Mr. Blyer: Yes.

With regard to the statements by the counsel for Respondent and the Party in Interest, I would begin by saying that the charge states that—after it alleged the unlawful denial of pension benefits to individuals, "That by these and other acts Respondent has restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act."

Argument Against Dismissal of Complaint

Secondly, in issuing a complaint based on the provision itself, as is the case here, the Regional Director was merely issuing a complaint on the basis of what the direct investigation showed, namely that the provision involved is intimately related to the charges of the individuals who are claiming they were denied pension because they were denied pension credits for past service.

Without doubt, the Regional Director had nothing but that was far removed from the instant charges when he issued the complaint herein.

It was directly related to the instant charge, the provision in question.

Finally, in the Nu-Car Carrier's case, the individual involved who claimed he was unlawfully denied pension credits was found to have not been unlawfully denied pension credits.

Nonetheless, as in the instant case, the Board [11] reached a determination upon the past service pension credit provision, the same type of provision as is involved herein.

For those reasons, it is submitted that the complaint herein is proper and that the case is properly before you at this time.

* * * * *

[14]

Judge Theeman: I note, Mr. Blyer, that the complaint was issued on December 15th, the date of the dismissal of the charge.

Is that correct?

Mr. Blyer: December 15th is the date the complaint was issued.

Argument Against Dismissal of Complaint

Judge Theeman: Is the date the charge was dismissed?
Is that correct?

Mr. Blyer: I don't know offhand.

Judge Theeman: Well, I believe that's so.

Yes, it's December 15th.

Mr. Blyer: Okay.

Judge Theeman: Now, what was the complaint issued upon?

Mr. Blyer: The provision of the Plan, Section 2A, Article 3.

Judge Theeman: And that's what's cited in the charge insofar as the first paragraph is concerned; is that correct?

"That benefits shall be based upon the length of membership in the union."

Or, what in the charge supports the present complaint?

[15] Mr. Blyer: Well, by "those and other acts."

Judge Theeman: Is that what you are referring to?

Mr. Blyer: Yes, that certainly does support the charge.

Judge Theeman: Okay, fine.

Mr. Blyer: And the language itself in the charge may. I would like to look at it to refresh my recollection.

Judge Theeman: Yes, of course.

Mr. Elyer: Well, it doesn't specifically mention that the provision we allege here to be unlawful, but in the course of the investigation, Article 3, Section 2A was looked into to determine whether or not any of these individuals were unlawfully denied pension credits.

So I would say it's, also, substantiated in the language in the charge itself in addition to the "by these and other acts" aspects of the charge.

Motions to Dismiss Complaint—Decision Reserved

Judge Theeman: I notice in the letter of dismissal, the last sentence in the second paragraph, what is the significance of that sentence?

[16]

Mr. Blyer: Which is the same letter that was submitted to Mr. Palumbo and Mr. Greco.

As is obvious, the last sentence in paragraph 2 reads:

"The remaining portions of your charge are being processed further," which, of course, referred to the charges that—the allegations that are the basis of this complaint, namely, the provision.

Judge Theeman: What evidence is there of that, Mr. Blyer?

Mr. Blyer: The issuance of the complaint.

[17]

Mr. Blyer: I will only stipulate to the fact that our investigation showed that none of the three alleged discriminees had employment with an employer that contributes to the pension fund prior to 1937.

That much I'm willing to stipulate to, your Honor.

Judge Theeman: Well, then we'll have to leave the record stand as it is.

On the motion for the dismissal, I'll reserve decision on that.

[18]

Judge Theeman: As I understand the complaint, the complaint does not say that these three employees have discriminated against.

Colloquy

As I understand the complaint, the eomplaint states that Section 9 of the Pension Fund is diseriminatoray as written.

That is my understanding of the complaint.

Is that correct, Mr. Blyer?

Mr. Blyer: Excuse me, your Honor, it's paragraph 9 of the complaint, I believe, which is Article 3, Section 2A of the Rules and Regulations of the Pension Fund.

Judge Theeman: With that correction—I'll take that correecton.

Thank you.

Mr. Blyer: But that is our position.

Judge Theeman: I thought so.

Mr. Blyer: The provision is what is unlawful.

We are not alleging that there is any discrimination with regard to the three original Complainants.

[19]

Mr. Blyer: General Counsel will show by a preponderance of the evidence that Respondent is a party to the Pension Fund of New York City Trucking Industry, Local 807, and that its interest in that Fund are represented by the union trustees.

Also, a party to that Fund are various employers, one of which is White Rock Beverages, Inc.

In connection with the Fund, rules and regulations were promulgated to govern the Fund's administration.

Section 2A of Article 3 of these rules and regulations which deal with pension credits for service prior to the time an employer commenced making contributions to the fund, is what is being challenged herein as violative of the Act.

Colloquy

Sections 1 and 2 of Article 3 are recent amendments to the Fund's rules and regulations, effective as of February 28th, 1972.

The sections of the Fund that this amendment re-[20] placed are not being challenged herein.

It is General Counsel's position that the provision, Section 2A of Article 3, is unlawful per se, since it permits the Fund's trustee to award pension credit to union members for the period prior to 1937, on a showing alone that they were union or 807 members prior to January 1, 1937, while it requires non-union members who seek pension credit for the period prior to January 1, 1937, to show through employer records that they worked under a collective bargaining agreement their employer had with Local 807.

Thus, by discrimination against non-union members, Local 807, as a party to the plan, and the plan's rules and regulations, encouraged its current members to retain their membership in the union, encouraged new employees to join the union, and encouraged old members, those who have been members since prior to 1937, to maintain their union membership, all in violation of Section 8A3 of the Act and thereby violates Section 8B1A and 8B2 of the Act.

Your Honor, there, I believe, is the effect that Mr. Liberman was referring to.

Further, it is General Counsel's position that it is immaterial that non-union men may not have been denied pension credits or a pension or, in other words, discriminated against with regard to Section 2A of Article 3 of the Fund.

[21] But, as stated before, that the provision itself, to unlawful discrimination and that the possibility that such

Colloquy

a clause has not been administrated so as to favor union members, is insufficient to save it from condemnation as unlawful discrimination.

[25]

Mr. Blyer: Your Honor, the effect of the provision is not —General Counsel is not alleging it has the effect that Mr. Liberstein is suggesting.

Rather, the point is with regard to encouraging current members to retain their union membership, current member, upon reading such a plan, would naturally assume that it would be a good idea for him to retain his benefit, for retain his union membership because who knows in the future how such a plan might help me or a revision of such a plan.

[26] It encourages new employees to join the union for the same reason.

With regard to old members, it's not being alleged that their rights prior to January 1, 1937 will be in any way affected by this plan.

Because of the favoritism shown to them, it will encourage them to retain their union membership, too.

[31]

Mr. Blyer: Fine.

At this time, your Honor, I would like to offer into evidence—first have marked for identification, as General Counsel's Exhibit #4, the Pension Fund of New York City Trucking Industry, Local 807 Booklet, which includes the rules and regulations of the Fund and a section on questions and answers on the pension funds.

Colloquy Re Offering of Exhibits

It should be noted that the relevant provisions to this case, namely, Article 3, Section 2A—excuse me—2B of the old booklet has been amended.

Subsequent to the introduction of this into evidence, I will offer the amendment into evidence.

So, at this time, your Honor, I would like to offer for identification, the Pension Plan Booklet which includes the Pension Plan and some questions and answers on the pension fund.

(The above-mentioned was received and marked as General Counsel's Exhibit #4 for identification.)

Judge Theeman: Any objection to its receipt into [32] evidence?

Mr. Mangan: No objection.

Judge Theeman: Without objection, it's received in evidence as General Counsel's—

Mr. Liberstein: Well—

Judge Theeman: Do you have some objection?

Mr. Liberstein: Well, I would object on behalf of the pension fund here.

I don't see the materiality of the old provision of the pension plan, since it's conceded that that is not in issue here.

I think it can obfuscate and confuse the issues either before the Judge or ultimately before the Board, if necessary.

What we are dealing with now is the current provision of the pension plan. I don't see the materiality of the old pension plan.

Colloquy Re Offering of Exhibits

Judge Theeman: What is the purpose, Mr. Blyer, of submitting the old pension plan?

Mr. Blyer: Your Honor, I believe it is material because it does set a background for the plan. There are other provisions in this plan which may very well be—which it may very well be necessary for you to refer to, especially the introductions to this section.

Further, the fact of the old provision was brought [33] up by Respondent union, and for those reasons I would like to have the old plan in its entirety in the record—in the record.

Judge Theeman: You are offering it only as background material?

Mr. Blyer: Essentially, yes.

Judge Theeman: It's not essentially, yes.

Is it background material or not?

Mr. Blyer: Yes, sir, background material.

Mr. Mangan: I have no objection.

Judge Theeman: Under those circumstances I'll receive it into evidence as General Counsel's Exhibit #4.

(The above-mentioned was received and marked as General Counsel's Exhibit #4 into evidence.)

* * * * *

Mr. Blyer: I would like to offer for identification, an amendment to the rules and regulations which was adopted and became effective on February 28th, 1972.

Judge Theeman: It may be so marked for identification.

(The above-mentioned was received and marked as General Counsel's Exhibit #5 for identification.)

Jack Zito—for General Counsel—Direct

Mr. Blyer: The amendment relates to Article 3, [34] Section 2 of the plan.

I would like to offer into evidence, your Honor, as General Counsel's #5 the amendment to Article 3, Sections 1 and 2 of the pension plan, which was adopted and became effective on February 28th, 1972.

Judge Theeman: Any objection?

Mr. Mangan: No objection.

I assume—let me just take a look at it.

Judge Theeman: Mr. Liberstein?

Mr. Liberstein: I have no objection.

Mr. Mangan: No objection.

Judge Theeman: All right.

Without objection, it's received in evidence as General Counsel's Exhibit #5.

(The above-mentioned was received and marked as General Counsel's Exhibit #5 into evidence.)

Mr. Blyer: Thank you.

Judge Theeman: Proceed, Mr. Blyer.

Mr. Blyer: I'm prepared at this time to call my first witness.

I call Mr. Zito to the stand.

Whereupon, JACK ZITO, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

Direct Examination [35] by Mr. Blyer:

Q. What is your full name? A. Jack J. Zito.

Q. Will you spell your last name? A. Z-I-T-O.

Jack Zito—for General Counsel—Direct

Q. Whom are you presently employed with, Mr. Zito?

A. I'm employed by the Pension Fund of the New York City Trucking Industry, Local 807.

Q. All right.

In what position, please? A. Assistant Administrator.

Q. And for how many years have you held that position?

A. That particular position?

Q. Yes. A. I have held that particular position for four years, approximately.

Q. And how many years have you been employed by the Pension Fund of New York City Trucking Industry? A. Approximately 11 years.

Q. And what did you do for the first about seven years?

A. I began as a Bookkeeper. Then I went to the Pension Department in 1966 through 1969. Then in 1969, I became Assistant Administrator.

Q. Is there a governing body for the fund? A. The Board of Trustees.

[36] Q. And can you tell us the makeup of that body?
A. Yes.

Q. Please. A. On management side, there is Mr. Frank Scotto, Mr. James F. Whalen, Mr. Joseph F. Adams, and a Mr. William Marin.

On the union's side, Mr. Joseph F. Mangan, Mr. Raymond C. Rebholz, Mr. Sal De France and Mr. James O'Rourke.

Q. Can you tell us the responsibilities of these trustees, generally? A. Well, they are the governing body of the fund.

Q. What are some of the things they do as trustees? A. There are monthly meetings.

Jack Zito—for General Counsel—Direct

They discuss any problems that may have arisen within the fund itself, that is, that have to be resolved by only the trustees.

Q. Who makes determinations as to whether or not a pension should be granted? A. The final determination is the trustees themselves.

Q. I see.

Who promulgated the rules and regulations of the pension fund? A. The Board of Trustees.

Q. When was the fund first established? A. The fund was first established September—I believe [37] it was September 1st, 1950.

Mr. Blyer: Your Honor, I would like to have marked for identification, what appears to be an agreement and declaration of trust, as General Counsel's Exhibit #6.

Judge Theeman: It may be so marked.

(The above-mentioned was received and marked as General Counsel's Exhibit #6 for identification.)

By Mr. Blyer:

Q. Mr. Zito, I show you what's been marked for identification as General Counsel's Exhibit #6.

Can you identify this?

(Handing.)

A. Yes.

Q. Will you take a look at it and tell us what it is? A. Yes.

Jack Zito—for General Counsel—Direct

Q. It's the Declaration of Trust of the Pension Fund of the New York City Trucking Industry, Local 807.

Q. And what is that document basically? A. Well, this basically sets forth the rules and regulations of the fund itself.

Mr. Mangan: Your Honor, at this point I'm going to object.

What is the purpose of the document?

I mean, what has this to do with relation to the allegations set forth in the complaint?

[38] Mr. Blyer: Your Honor, just as background, I want to show the origin of the plan.

That's the only purpose I'm introducing this evidence in for.

Mr. Liberstein: It speaks for itself.

Mr. Blyer: If you will stipulate that the plan was originated by virtue of an agreement and declaration of trust in 1950, and then as an amendment to that agreement—

Mr. Mangan: Certainly I will stipulate to that.

Judge Theeman: Is it intended that this be offered in evidence?

Mr. Blyer: I would like to offer it in evidence, also, Your Honor.

Mr. Liberstein: No objection.

Mr. Mangan: No objection to the offer.

Judge Theeman: All right.

On those grounds, the Declaration of Trust is received in evidence as General Counsel's Exhibit #6.

(The above-mentioned was received and marked as General Counsel's Exhibit #6 in evidence.)

• • • • •

Jack Zito—for General Counsel—Cross

With regard to a modification of that trust—

Judge Theeman: Show that to Mr. Mangan and perhaps [39] he will agree to that, also.

Mr. Mangan: I will, your Honor.

Judge Theeman: Very good.

That will be received as General Counsel's Exhibit #7 in evidence.

(The above-mentioned was received and marked as General Counsel's Exhibit #7 in evidence.)

* * * * *

Judge Theeman: That's the amendment of the trust?

Mr. Blyer: Modification of the trust.

* * * * *

Q. Mr. Zito, who makes contributions to the pension fund? A. Employers under contract with Local 807.

Q. Is White Rock Beverages, Inc. one of those employers who make contributions to the fund? A. Yes.

* * * * *

Mr. Blyer: Your Honor, I have no further questions.

Mr. Mangan: I have no questions of Mr. Zito at this time, your Honor.

Judge Theeman: Thank you, Mr. Zito.

[40] *Cross Examination by Mr. Liberstein:*

Q. Mr. Zito, under the trust indenture pursuant to which the plan—pursuant to which the trust fund is administered, there are equal number of employer trustee's and union trustee's; is that correct? A. Yes.

Jack Zito—for General Counsel—Cross

Q. And in the event of a dispute between the employer trustee's and the union trustee's—strike that.

Does the trust fund provide that the employer trustee's vote as a unit and the union trustee's vote as a unit? A. Yes.

Q. And in the event of a dispute between the employer trustee's and the union trustee's, does the trust indenture provide that the matter shall be submitted to an impartial arbitrator for determination? A. Yes.

Q. All right.

Mr. Liberstein: I have no further questions.

Judge Theeman: Mr. Blyer?

Mr. Blyer: Nothing further from this witness,
your Honor.

Judge Theeman: Thank you, Mr. Zito.

(Whereupon, the witness was excused, at this time.)

[41] Mr. Blyer: Your Honor, that concludes General Counsel's case.

* * * *

Judge Theeman: Mr. Blyer has given the Reporter the missing Exhibit #3C, and Exhibits 3A, B and C will be received into evidence at this time.

(The above-mentioned was received and marked as General Counsel's Exhibit #3C and Exhibits 3A, B and C into evidence.)

Judge Theeman: Mr. Mangan.

*Renewal of Motion to Dismiss Complaint
Jack Zito—for Respondent—Direct*

Mr. Mangan: Your Honor, the Respondent would move at this time that the General Counsel has failed in its direct case to establish a *prima facie* case for violation of the Act, as set forth in the complaint, and that the complaint should be dismissed at this time.

[42] Judge Theeman: Decision will be reserved.

Mr. Liberstein: Party in Interest joins in that motion.

Judge Theeman: Same decision.

Mr. Mangan: Your Honor, at this time the Respondent calls to the stand once again Mr. Jack Zito.

Judge Theeman: Mr. Zito, let me remind you that you have already been sworn.

The Witness: Yes, sir.

Direct Examination by Mr. Mangan:

* * * * *

[51] Q. Mr. Zito, as part of the regular course of the business of the fund in processing pension applications, is it your practice to give the applicant a pension application to be filled out and signed by the applicant? A. Yes.

Q. I show you these five pages and ask you to examine them, please.

(Handing.)

A. Okay.

Q. Do these five pages constitute a fair and accurate [52] representation of the pension application? A. Yes.

Jack Zito—for Respondent—Direct

Mr. Mangan: I seek to have these marked, please.

(The above-mentioned was received and marked as Respondent's Exhibit #1 for identification.)

Mr. Blyer: I have no objection, your Honor, to their offer in evidence.

Judge Theeman: All right.

It will be received in evidence as Respondent's Exhibit #1.

(The above-mentioned was received and marked as Respondent's Exhibit #1 in evidence.)

By Mr. Mangan:

Q. I show you this single-page document, Mr. Zito, and ask you if you can describe it? A. Yes.

Q. What is it? A. This is a Social Security Authorization Form.

Q. Is this the form that's utilized by the fund in getting Social Security records from the Social Security Administration? A. Yes.

Mr. Mangan: Will you mark this, please.

Judge Theeman: It will be marked as Respondent's Exhibit #2 for identification.

[53] (The above-mentioned was received and marked as Respondent's Exhibit #2 for identification.)

Judge Theeman: Show it to General Counsel, please.

Jack Zito—for Respondent—Direct

Mr. Mangan: Yes, your Honor.

(Handing.)

Mr. Blyer: No objection, your Honor.

Judge Theeman: It's received in evidence as Respondent's Exhibit #2 into evidence.

(The above-mentioned was received and marked as Respondent's Exhibit #2 into evidence.)

By Mr. Mangan:

Q. I show you this single sheet and ask you if you can identify it?

(Handing.)

A. Yes.

This is an affidavit that we have an applicant complete before we can start to process his application.

Mr. Mangan: I offer this as Respondent's Exhibit #3, please.

Judge Theeman: It will be so marked for identification.

(The above-mentioned was received and marked as Respondent's Exhibit #3 for identification.)

Judge Theeman: Show it to General Counsel, please, Mr. Mangan.

[54] Mr. Mangan: Yes, sir.

(Handing.)

Jack Zito—for Respondent—Direct

Judge Theeman: Are you offering that into evidence, too, Mr. Mangan?

Mr. Mangan: Yes.

Judge Theeman: Any objection, Mr. Blyer?

Mr. Blyer: No objection, your Honor.

Judge Theeman: Received in evidence as Respondent's Exhibit #3.

(The above-mentioned was received and marked as Respondent's Exhibit #3 into evidence.)

By Mr. Mangan:

Q. I show you this single sheet and ask you if you can identify it?

(Handing.)

A. Yes.

Q. What is it? A. This is a retirement declaration that is forwarded to the applicant.

Mr. Mangan: I offer this for identification.

Judge Theeman: It will be marked as Respondent's Exhibit #4 for identification.

(The above-mentioned was received and marked as Respondent's Exhibit #4 for identification.)

Judge Theeman: Show it to General Counsel, if you [55] will.

Mr. Mangan: Yes, sir.

(Handing.)

Jack Zito—for Respondent—Direct

Judge Theeman: Any objection to that going into evidence, Mr. Blyer?

I assume you're offering it into evidence, Mr. Mangan.

Mr. Mangan: Yes, your Honor.

Mr. Blyer: I have no objection, your Honor.

Judge Theeman: It will be received in evidence as Respondent's Exhibit #4.

(The above-mentioned was received and marked as Respondent's Exhibit #4 in evidence.)

By Mr. Mangan:

Q. I show you this single-page document, and ask you if you can identify it?

(Handing.)

A. Yes.

Q. What is it? A. It's a form letter that is forwarded on to the applicant's current employer.

Mr. Mangan: I ask that this be marked for identification as Respondent's Exhibit #5.

Judge Theeman: It may be so marked.

(The above-mentioned was received [56] and marked as Respondent's Exhibit #5 for identification.)

Mr. Mangan: Here you are, Mr. Blyer.

(Handing.)

Jack Zito—for Respondent—Direct

Mr. Mangan: I offer Respondent's Exhibit #5 into evidence, at this time, your Honor.

Judge Theeman: Any objection, Mr. Blyer?

Mr. Blyer: No objection, your Honor.

Judge Theeman: All right.

It will be received in evidence as Respondent's Exhibit #5.

(The above-mentioned was received and marked as Respondent's Exhibit #5 into evidence.)

By Mr. Mangan:

Q. I show you this single-page document and ask you if you can identify it?

(Handing.)

A. Yes.

This is a union notice that is forwarded to the union's office, with certain information.

Mr. Mangan: I ask that this be marked for identification, your Honor.

Judge Theeman: It will be marked as Respondent's Exhibit #6 for identification.

(The above-mentioned was received and marked as Respondent's Exhibit [57] #6 for identification.)

Mr. Mangan: Mr. Blyer.

(Handing.)

Jack Zito—for Respondent—Direct

Judge Theeman: Any objection to the receipt of that document into evidence, Mr. Blyer?

Mr. Blyer: No objection, your Honor.

Judge Theeman: Received in evidence as Respondent's Exhibit #6.

(The above-mentioned was received and marked as Respondent's Exhibit #6 in evidence.)

By Mr. Mangan:

Q. Now, Mr. Zito, with respect to the period prior to 1937, is the fund able to get Social Security information for that period? A. No.

Q. Subsequent to or after 1937, is it standard operating procedure for the fund to get all the information referred to in the Respondent's exhibits and including the Social Security information? A. Yes.

Q. All right.

Now, with respect to employment prior to 1937, what is the practice of the fund in obtaining information relating to the employment, for that employment? A. Well, the employee indicates—or, the applicant [58] indicates that he is in the employ of someone prior to '37, so therefore, we write to this employer to see if they are still in business, and we ask them if this individual was in fact in their employ.

We, also, ask them the type of work that he was performing; in other words, if it was under the union contract and the dates that he was in their employ.

Q. Now, when you receive a response from this employer setting forth the information that you have referred to,

Jack Zito—for Respondent—Direct

what is the procedure that is followed? A. Well, we would then collate that with any information we have subsequent to '37, primarily Social Security records, union records which include contract dates, seniority listings, union membership dates.

This is all put together with the credits that we have on file, future service credits from subsequent to 9-1-50, the inception date of the fund.

Then when all this is put together on the analysis sheet in the man's folder, it is then processed to determine if the applicant qualifies.

Q. We have made reference to past service credits.

Is there a definition for past service credits? A. Past service credits are pension credits prior to 9-1-50, which was the inception date of the fund.

Also, it would, also, indicate pension credits prior [59] to a date where a newly-organized employer would start making contributions to the fund.

Q. That could be subsequent to September 1, 19— A. Yes, sir.

Q. —50? A. Yes, sir.

Q. And you referred to future service credits.

Can you give us a definition, please, of "future service credits"? A. Yes.

Future service credits are pension credits subsequent to 9-1-50.

It is, also, subsequent to that date where a newly-organized employer starts making contributions to the pension fund.

Q. Would it be fair to state, then, that the past service credits refer to a period of time when contributions have

Jack Zito—for Respondent—Direct

not been made into the fund on behalf of an individual by an employer pursuant to a collective bargaining agreement? A. Yes, sir.

Q. And that future service credits would be that period when contributions have been made on behalf of an employee by an employer pursuant to a collective bargaining agreement with Local 807? [60] A. That is correct.

Q. Now, with respect to the processing of applications, is there any distinction by the pension fund for an application that would be filed requesting or claiming past service credits for a period prior to January of 1937 and the practice followed by the fund for a claim made subsequent to 1937, a claim made for past service credits subsequent to 1937? A. Would there be any distinction?

The Witness: I'm sorry, your Honor.

Judge Theeman: Do you want the question repeated?

Mr. Mangan: Yes, if you would, please.

(Record read.)

A. No.

The only difference would be what we would have on hand as actual evidence.

Q. Why do you say that? A. Well, as you know, prior to 1937, we had no Social Security records.

Also, prior to 1937, there are no contracts that go back that far.

So that would be the only difference.

Q. During the—strike that.

Jack Zito—for Respondent—Direct

You say that there are not contracts prior to 1937. A. That is correct.

[61] Q. What do you mean by that? A. Well, actually it would be—I could say on my knowledge of the fund, it would be 1938 actually.

Any contracts signed in the union office generally are from 1938 on.

But what we do find in these files are seniority listings that do go back, that show the man—the dates of initiation, the dates that they were working on a specific job, they go back prior to 1938.

* * * *

Q. During the period of 1971, Mr. Zito, was there any benefit change that was offered to the employees working under covered employment relating to a 30-year pension?

A. Was there any change relating to a 30-year pension?

Q. Yes, sir. [62] A. There was an increase in the benefits on October 1, 1971, a \$25 increase.

Also, there was effective that date—it was brought into effect that any member who had a year of credit over 30 years would get \$10 more for each year over the 30 years.

* * * *

Q. Now, in your response to this last question, you [63] referred to a member.

Would you kindly define what you mean by an individual who would be eligible I believe to receive a credit or a service beyond 30 years?

Judge Theeman: Is that, also, defined in these documents?

Mr. Mangan: No.

Jack Zito—for Respondent—Direct

I think in his last response he made some mention of "member." That's what I was concerned about, your Honor.

Judge Theeman: Do you understand the question, Mr. Zito?

Mr. Mangan: Could you read the answer to the last question, please.

(Record read.)

Q. You used the expression "member" in answer to that question, Mr. Zito.

What I'm concerned about or asking you is what, in fact, you were referring to when you said "member"? A. Well, actually when I say "member," I mean the employees working under Local 807 contracts.

Q. Do you have occasion during the course of reviewing a pension application, to use union records? A. Yes.

Q. And for the period prior to—withdrawn.

For the pension applications that are filed with the [64] fund office dealing with a claim for pension credits for a period after September—after January 1 of 1937, do you utilize pension records in evaluating that pension application? A. Do I—do I utilize pension records?

Q. Union records— A. Oh, union records; I'm sorry.

Q. —to evaluate the pension application for a claim for pension credits for a period after January 1 of 1937.

When I say "after" in this question, I mean from January 1, 1937 towards this date. A. That they are—union records are one of the things that we use.

Q. And for what reason do you use union records for the pension application that refers to a period of January

Jack Zito—for Respondent—Direct

1 of 1937? A. Well, from January 1, 1937, we have the Social Security earnings records.

Now, this record in itself will tell us that the individual was in the employ of various companies, you see.

Now, it's more or less like a sum of checks and balances. We want to make sure that the individual was—in other words, the information on that there, we have to [65] find out if he was working under a contract, you see, so we go to the union's records.

The union's records show us, 1, if the company had a contract; 2, it will show us the seniority listing which would indicate when the man started with the company, the type of work he was doing.

Lastly, it would, also, give us the date of his membership in the union.

Q. Now, have you found in reviewing pension applications for the period after September 1—excuse me—after January 1, of 1937, that the union records are a necessary ingredient in evaluating that pension claim before you submit it to the trustees? A. Union records are one of the necessary ingredients, just one of them.

Q. For a pension application that is submitted to the fund which sets forth a claim for pension credits for a period earlier than January 1, 1937, is it, also, part of your regular course of business to utilize union records in processing that claim? A. Yes.

It's, also—they are, also, utilized prior to 1-1-37.

Prior to 1-1-37, we try to get all the employer records that we can secure from the employers after we [66] write to the employers actually.

Jack Zito—for Respondent—Direct

We get a response, and then we check any union records that we may have against their information for the fact being that there are no Social Security records prior to 1-1-37.

Q. All right. A. So we work our sum of checks and balances that way, you see, against the employer's records.

Q. Now, under the circumstances that the claim for pension credits for a period earlier than 1937 is covered by employer records, what is the practice and procedure of your office in submitting the claim to the trustees? A. You mean after we have consolidated everything?

Q. Yes. A. After we—as I said before, after we collate all of the information, we put it on the analysis sheet in the man's folder.

After it is processed, it is submitted to the Board of Trustees.

Q. And it is their determination to make? A. Yes, sir.
Q. I see.

And with respect to the practice and procedure where the pension application is not supported by employer records but is supported by all the other indices that you [67] have stated are part of your regular practice and procedure in processing an application, what is done with that folder after you have collated all of the information for past service credits and future service credits? A. And it is, also brought before the—after it is processed and set up, it is, also, brought before the trustees.

Q. And is your function ended at the time you collated all this information and be able to gather all of the information you referred to, put it into your file, prepared your analysis sheet and submitted that folder to the pension trustees? A. Yes.

* * * * *

Jack Zito—for Respondent—Direct

[68] * * * * *

Q. If the union information that you receive as part of the processing of your pension application—well, what is done with that union information within the framework of your office and your responsibilities? A. Well, the information that I have on hand, any information that I may have on hand is followed through in the same way.

We process the application, set forth any information that I may have on it and submit it to the trustees for their final determination on it.

[69] Q. When you say "any information that you might have on it," referring to what? A. Well, excuse me, if I may.

Q. Go ahead. A. You're saying that if we only have union records or—

Q. No, no.

The union information that you receive and is used as one of the—withdrawn.

The information that you receive from the union that is included in the pension folder and is eventually submitted to the trustees, what, if anything, is done by your office with respect to that union information in preparing an analysis sheet which is forwarded to the trustees? A. Well, as I said before, we get the union information that we have, and we work it against the other information that we have—Social Security records, employer's records, and we then try to tie everything in to make sure—like I said, a sum of checks and balances—to make sure that the information that we have on the Social Security report and from the employer's records is—I don't know how to word this.

Jack Zito—for Respondent—Cross

We want to make sure the information that the man is giving us is true.

This is one of the ways that we have of checking it.

[70] In other words, if the union records show that the company had a contract, that this man was in fact listed on their seniority list at that time and that he was a member, I mean these things show us that we're on the right track and that the man would qualify for credit during that period of time.

But again, we would put it on the analysis sheet and then submit it to the trustees for final determination.

* * * * *

Mr. Mangan: All right.

I have no further questions.

Cross Examination by Mr. Liberstein:

* * * * *

[71]

Mr. Liberstein: I have no further questions of this [72] witness.

Judge Theeman: Mr. Blyer.

Mr. Blyer: Yes, your Honor, I have a few questions.

* * * * *

Mr. Mangan: Could I just continue my examination.

I have only about two or three more questions—

Judge Theeman: Any objections, Mr. Blyer?

Mr. Blyer: No.

Judge Theeman: Go ahead, Mr. Mangan.

Jack Zito—for Respondent—Direct

Direct Examination by Mr. Mangan (Continued):

[73]

* * * * *

Q. At my request, Mr. Zito, have you conducted an [74] investigation into the number of pension applications that have come into your office where a benefit has been paid for a period earlier than 1937?

That would be past service credits for a period earlier than 1937? A. Yes, sir.

Q. And based upon that examination and investigation, what were the number of pension applications that were reviewed, processed and a benefit paid for past service credits earlier than January of 1937? A. Thirty-two.

Judge Theeman: This is since February of 19—
this is since February 28th, 1972?

By Mr. Mangan:

Q. Nineteen seventy-two? A. Yes.

Q. And pursuant to my request, did you conduct an examination and an investigation to determine how many pension—how many pensioners there are currently on the rolls of the pension fund of the New York City Trucking Industry, Local 807? A. Yes.

Q. And how many are there? A. Twenty-four hundred.

Q. With respect to the payment of a benefit for past [75] service credits beyond January of 1937, is that payment of a benefit, or eligibility for a benefit for that period of time, beyond January of 1937—is that determinative as to whether or not an individual would be eligible to receive a pension from the Local 807 Pension Fund? A. No.

* * * * *

Jack Zito—for Respondent—Cross

[76]

* * * *

Mr. Mangan: Very good, your Honor.
Thank you very much.
I have no further questions.

Cross Examination by Mr. Blyer:

Q. Mr. Zito, you stated that upon investigating applications that were filed for pensions where past service credits were involved, the period prior to January 1, 1937, since the 28th of February '72, 32 people have been awarded pensions? A. Yes, sir.

Q. And each one of those has been given credit for employment prior to 1937, January 1, 1937? A. Yes, sir.

[79]

* * * *

By Mr. Blyer:

Q. With regard to the pension fund of the New York City Trucking Industry, Local 807, Mr. Zito, which you are an Assistant Administrator of—is that right? A. Yes, sir.

Q. —when someone has applied for past service credit prior to the time January 1, 1937, have you used union records to determine whether or not he's entitled to that pension?

[82]

* * * *

Judge Theeman: Go ahead, Mr. Zito.

A. Let's say the employer indicates he worked for XYZ Trucking.

Okay?

Q. Yes. A. Now, we get a letter in from the XYZ's

Jack Zito—for Respondent—Cross

Letter Company on their letterhead that John Doe was in fact in our employ.

We go to the union records now.

On the union records it will show John Doe, his union date and it will show the employer on the card, the record. You know, it will show XYZ's Trucking on it.

So that's like a check-off for us.

It's very helpful to us.

Q. Why isn't the employer record enough if it's clear?

A. Well, when you are paying out big monies, you can't just base your assumptions and, you know, your application—[83] you are processing this application here.

We just can't take an employer's record for granted, you know, we just can't have it.

So, as a check-off, to simplify things, and to actually validate what we are looking for, the union records are very helpful in this instance.

Q. Do the union records show when a man started for a particular corporation or does it in fact just show when he was initiated into the union? A. The union record shows a date of initiation and it shows the employer.

I, also, believe that there are dates in certain instances next to the employer's name.

Q. I'm sorry, you, also, believe there are what? Certain what? A. There may be—at times—I'm not too sure of this now.

But, there may, also, be dates next to the name.

In other words, XYZ's company, there may be a date when he started, you see.

I know for a fact that the cards indicated initiation date and name of employer.

Q. But they don't necessarily state when he started with a particular company, do they? A. Not—not all the times.

Jack Zito—for Respondent—Cross

[84] Q. In fact, in most times they don't list that, do they? A. I—I haven't done a study on it.

I really couldn't—I'm sorry.

Q. You can't answer that question? A. No, sir, I can't.

Q. I see.

Judge Theeman: You may continue, Mr. Blyer.

Mr. Blyer: Thank you.

By Mr. Blyer:

Q. I show you what has been marked—what has been accepted into evidence as Respondent's #1.

That's the application you said that employees all fill out.

Is that right?

(Handing.) A. Yes, sir.

Q. Anywhere on that form are there questions relating to employment under an 807 contract for the period prior to 1937? A. Well, it's a general form.

They usually indicate the dates on—in other words, on Page 2 of this, they list name of company, address, local number, and then they give us the dates right here. (Indicating.) Then we are able to determine [85] from that.

Q. Why specifically do you ask in questions 9AB whether they worked under contract for the period September 1, 1950 to March 1, 1954, and in 9B whether they worked for employers under contract since September 1, 1950?

You only seem to be interested in '50 on specifically. A. Well, under B, this comes into effect with prorata pensions.

Jack Zito—for Respondent—Cross

In other words, we have agreements, reciprocal agreements with other locals in the area, even nationwide now, where we take the credits, we typed out the local they were with, the period of time, so we can write, correspond with the other locals.

* * * * *

[93]

By Mr. Blyer:

Q. Mr. Zito, did you bring with you today the union records regarding the 32 individuals who were awarded past credit for—a pension credit for a past service prior to January 1, 1937, their union records? A. Yes, I believe they are here.

* * * * *

[95]

Mr. Blyer: May I have the employment records of the 32 individuals who were recently granted pension credits for service prior to January '37, marked as General Counsel's Exhibit #8.

So Exhibit #8 will be a composite of 32 union records.

(The above-mentioned was received and marked as General Counsel's Exhibit #8 for identification.)

Mr. Blyer: Thank you.

By Mr. Blyer:

Q. I show you what has been marked for identification as General Counsel's Exhibit #8.

* * * * *

Jack Zito—for Respondent—Cross

[96]

Mr. Blyer: I'll offer General Counsel's Exhibit #8 in evidence, which consists of 32 separate union records.

Judge Theeman: Any objection?

Mr. Mangan: No objection.

Mr. Liberstein: No objection.

Judge Theeman: All right.

Received in evidence as General Counsel's Exhibit #8, 32 pieces of paper in evidence.

(The above-mentioned was received [97] and marked as General Counsel's Exhibit #8 in evidence.)

[99]

(Whereupon, at 5:20 o'clock p.m., the hearing was adjourned until Tuesday, May 1, 1973 at 9:00 o'clock.)

[100]

PROCEEDINGS

Judge Theeman: Let's proceed.

We left off yesterday with Mr. Zito on the stand * * *

* * * * *

Judge Theeman: Mr. Zito, will you please take the stand again.

The Witness: Yes, sir.

Judge Theeman: You are still under oath.

The Witness: Yes, sir.

Jack Zito—for Respondent—Cross

Cross Examination (Continued):

[101] *By Mr. Blyer:*

* * * * *

[102] Q. Did you prepare a summary with regard to the union records of these 32 individuals? A. I helped in preparing that summary.

Q. I see.

Mr. Blyer: I would like to have marked for identification, as General Counsel's Exhibit #9, a four-page document, Page one listed as "Schedule A," Page two "Schedule E", Schedule E consisting of three pages.

I would like to have that marked as General Counsel's #9.

Judge Theeman: Are you going to offer it in evidence?

Mr. Blyer: Yes.

(The above-mentioned was received and marked as General Counsel's Exhibit #9 for identification.)

Judge Theeman: Any objection?

Mr. Mangan: No objection.

Mr. Liberstein: No objection.

Judge Theeman: General Counsel's Exhibit #9, Schedules A and E, will be received in evidence.

(The above-mentioned was received and marked as General Counsel's Exhibit #9 in evidence.)

Frank Scotto—for Intervenor—Direct

By Mr. Blyer:

Q. I show you what has been accepted into evidence as General Counsel's Exhibit #9.

[103] Is that the summary that was prepared in part by you?

(Handing.)

A. Yes.

Q. On Schedule E of that exhibit, Mr. Zito, did you, also, help prepare the explanations regarding what exactly was done with regard to the pension credits for those 32 people? A. I helped.

* * * * *

[111]

* * * * *

Mr. Blyer: I have no further question, your Honor.

Redirect Examination by Mr. Mangan:

* * * * *

[123]

* * * * *

Mr. Liberstein: We are interrupting the testimony of Mr. Zito for Mr. Scotto.

Whereupon, FRANK SCOTTO, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

Direct Examination by Mr. Liberstein:

Q. What is your full name? A. Frank Scotto, S-C-O-T-T-O.

Frank Scotto—for Intervenor—Direct

[124] Q. Mr. Scotto, with what organization are you associated? A. New York State Motor Truck Association.

Q. And in what capacity? A. Executive Director.

Q. And how long have you been Executive Director? A. Approximately 10 years.

Q. Do you, also, service as a trustee of the Local 807 Pension Fund? A. Employer Trustee.

Q. For how long a period of time have you been an employer trustee? A. I believe since '69.

By the way, that's 1969.

(Laughter).

By Mr. Liberstein:

Q. Now, Mr. Scotto, as a trustee, do you pass upon applications for pensions by members? A. Yes, we do.

Q. And, Mr. Scotto, are you familiar with the provisions of Article 3, Section 2A of the Pension Trust Indenture?

(Handing.)

A. Not without looking at them.

The Witness: May I, your Honor?

Judge Theeman: Yes, of course.

[125] A. I've seen them before, yes.

Q. Okay.

And were you a trustee at the time this was adopted in 1972? A. Yes, I was.

Q. Now, Mr. Scotto, as a trustee and under the terms and conditions of the pension plan, can an applicant—or, is an

Frank Scotto—for Intervenor—Direct

applicant's past service credit dependent upon his membership in the union at the date of his retirement? A. No.

Q. Is it dependent upon his non-membership in the union at the date of his retirement? A. No.

Q. Is it dependent upon his continuing his membership in the union if he is a member of the union at the date of his retirement? A. Absolutely not.

Q. Mr. Seotto, there have been introduced into evidence or, strike that.

Mr. Seotto, can you tell us how the trustees, pursuant to Article 3, Section 2A of the Pension Trust Fund, determine the extent to which an applicant is entitled for past services credit for the period prior to September 1, 19—January 1, 1937? A. I'll try to encapsulate it in this way:

[126] The investigation goes to the amount of time that the applicant, the applicant for pension, worked in covered employment.

Now, all of the records that are available to us are researched to that end.

Q. Now, in addition to the availability of written records that may be on hand for that determination, do the trustees, also, make inquiries of the other persons to ascertain the facts that may be listed on the applicant's pension application? A. Well, as a matter of fact, I heard the testimony to that regard right 5 minutes ago with Joe Mangan.

For example, he happened to be the steward on the U. S. job.

Absent all other documents, absent every other type of evidence that we could find, Mr. Mangan came forward in his capacity as steward at that time who could tell us yes, I worked with this man, he was on the job, he was there in covered employment, I was present at the same time.

Does that answer your question?

Frank Scotto—for Intervenor—Direct

Q. Yes.

And do the trustees in the exercise of their discretion accept statements to that effect from persons such as Mr. Mangan who have knowledge of the facts? [127] A. One part.

. We consider many factors. That would be one factor.

Q. All right.

Now, on the Board of Trustees for the Local 807 Pension Fund, are there trustees who have been in the industry since 1925 or even before that? A. At the risk of being unkind, yes.

Q. And, in fact, the impartial Chairman of the Board of Trustees is a Mr. Howie Sheridan; is that correct? A. Yes.

He's the impartial Chairman of the Board as well as the impartial Chairman of the New York State Trucking Authority.

He has acted as the industry arbitrator for—

Q. And how long has he been in the trucking business?
A. Oh, he goes back well before '34, I would think.

* * * * *

Q. Have the trustees gone to Mr. Sheridan at times to ascertain whether or not a particular company was in [128] business prior to 1937 and under contract with Local 807? A. Many times, many times.

Q. Now, Mr. Scotto, how many pension applications do you pass upon, on the average, during the course of a year?
A. With this fund?

Q. With this fund. A. I couldn't hazard a guess.
Many, many.

Frank Scotto—for Intervenor—Cross

Q. Many? A. Yes.

Q. You don't remember each and every individual pension? A. No.

I sit on many funds, as you know, counsel.

I couldn't remember specifics.

Q. Mr. Scotto, as a trustee of the Local 807 Pension Fund, do the trustees accord any pension—any past pension credits to an applicant solely because of his membership in Local 807 prior to 1937? A. Absolutely—

Q. —for the period prior to 1937? A. Absolutely not.

* * * * *

[133]

* * * * *

Cross Examination by Mr. Blyer:

* * * * *

[137]

* * * * *

Q. Have you found anything else in the file that assisted the trustees in making the determination with regard to—
A. Well, there is a letter here from Anthony Maturo which seems to be an affidavit.

Q. Yes. A. And it refers to the period of 1928 through 1945.

Q. That was a notarized letter? A. I believe it's notarized, yes.

It seems like a notary down there.

Yes, it is.

Q. And what does that letter essentially say? A. It says Mr. Joseph Lamorte was employed as a truck driver for the company for a certain period of time.

Q. And that is in accord with his pension application,

Frank Scotto—for Intervenor—Cross

is that right, where he alleges he worked from what, 1928 through 1945? A. Yes.

Q. Now, when was Mr. Lamorte granted pension credit for past service prior to January 1, 1937, from?

Do you understand my question? A. No, I don't.

[138] Q. When was he granted pension credits prior to January 1, 1937? A. Well, here.

October 15th of '36, according to the Schedule A.

Q. Why wasn't he granted credits from the—was it in 1924, based upon his employee application and the letter from Mr. Lamorte?

Mr. Mangan: Nineteen twenty-eight.

A. Because again there was no evidence hat he worked in covered employment that we can find.

Q. Doesn't that letter from Mr. Lamorte— A. Stand alone?

No, sir. Standing alone, we will not accept this, standing alone.

Q. What did you use instead to determine that— A. There's a presumption here, counsel—

Q. Well, just answer the question, please. A. I'm trying to respond to your question.

Q. I believe I didn't finish the question. A. I'm sorry.

Q. What did the Board of Trustees use—strike that, please.

Why did the Board of Trustees use the date 10-15-36 to grant Mr. Lamorte past credits? A. Why?

[139] Q. Yes. A. All right.

On that date a search of the union records produced that he was involved in union activity of some kind either as a—with a card, I would think, or a seniority list.

Frank Scotto—for Intervenor—Cross

I can't tell you specifically. But I know that these would be parts of the test, counsel.

There would either be a seniority list somewhere; there would either be a—what do you call that card? —initiation card.

There would either be correspondence between companies in the union as to organizing maybe. Maybe there would be a collective bargaining agreement.

Maybe there would be a letter of intent.

All of these things might be there. I can't tell you specifically which one, but it might have been one of those.

Q. Would that be—whatever it was, would it be on the union record? A. Would it be part of the union record, is that your question?

Q. Yes. A. I assume so, yes.

* * * * *

[142]

* * * * *

Q. Why is the initiation date, which is the date you chose to award him pension credits, show that he worked in covered employment? A. Because there's a presumption there that if he's a union member, there would be a covered employment.

* * * * *

[146]

* * * * *

Mr. Blyer: I have no further question of Mr. Scotto, your Honor.

Thank you.

Judge Theeman: Mr. Liberstein?

Mr. Liberstein: Yes, your Honor.

Frank Scotto—for Intervenor—Redirect

Redirect Examination by Mr. Liberstein:

[148]

* * * * *

A. Counsel, I think I touched on that before.

Let me see if I can say it again.

One document or one item standing alone is not recognized by the trustees as being ample proof.

Therefore, the employee's record, whatever he attested to as being the record, we would not accept that because there may not have been a contract, he may have been an owner-driver standing alone.

When the two were put together—

Q. When you say the two, what are the two? A. Well, a record of the union, for example, someone else who may have known the man in the industry would say yes, as I have testified earlier about Mr. Mangan being the steward on U. S. Trucking.

You see, I knew this guy, he was there, there was no question he worked there, he worked right along side of me, he was my helper, he said. When we link all of these [149] things together, we make that determination.

Have I been responsive to your question?

I try to be.

Q. In other words, does the record of the union, and even using the initiation date, a factor which the trustees used to confirm that the man actually was engaged in covered employment? A. A factor.

Q. A factor? A. A factor, yes, sir.

Q. And that factor is considered with all of the other factors that you testified to before? A. In the totality of everything else, that's correct, as part of the totality.

* * * * *

Frank Scotto—for Intervenor—Recross

[150] * * * *

Recross Examination by Mr. Blyer:

* * * * *

[152]

(Whereupon, the witness was excused, at this time.)

Judge Theeman: Mr. Zito, would you please resume the stand.

You are still under oath.

The Witness: Yes, sir.

[153]

* * * * *

Redirect Examination by Mr. Mangan (Continued):

* * * * *

[158]

Mr. Mangan: I have no further questions.

Judge Theeman: Mr. Blyer.

Recross Examination by Mr. Blyer:

* * * * *

[170]

Judge Theeman: Will you stipulate, Mr. Liberstein and Mr. Mangan, that the summary, which is Schedule E, contains everything that was in the file presented to the Board of Trustees?

Mr. Mangan: In the file, yes.

Mr. Liberstein: But not everything that was presented for the consideration of the pension.

Judge Theeman: Right.

Frank Scotto—for Intervenor—Cross

Mr. Liberstein: No problem. Of course.

Judge Theeman: Is that agreeable?

[171] Mr. Blyer: That satisfies my position.

Mr. Mangan: No objection.

Judge Theeman: Okay.

That stipulation is made and agreed to.

* * * * *

Judge Theeman: Thank you very much, Mr. Zito.

(Whereupon, the witness was excused, at this time.)

Judge Theeman: Are you gentlemen through?

[172] Mr. Mangan: The Respondent rests.

Mr. Liberstein: As an interested party, I don't know whether I rest or not, but I rest.

Judge Theeman: Do you have anything further, Mr. Blyer?

Mr. Blyer: I would just like to call Mr. Scotto.

Judge Theeman: Mr. Scotto, would you mind resuming the stand?

The Witness: Yes, sir.

Judge Theeman: You are still under oath, Mr. Scotto.

The Witness: Yes, sir.

Cross Examination by Mr. Blyer (Continued):

* * * * *

[173] Q. Starting with Mr. Geis, were you present when his application was ruled upon? A. I couldn't tell you without consulting the Minutes.

Frank Scotto—for Intervenor—Cross

Q. With Mr. King? A. I couldn't tell you.

Q. Is that the case with all— A. That would be the case with all of them.

I couldn't possibly testify as to whether I was or wasn't without going into the Minutes and the records.

Q. Do you recall any conversation—strike that.

Do you recall any of the pension applications being considered when you were present? A. These (Indicating)?

Q. Yes. A. Not to my immediate knowledge, no.

Q. All right.

Mr. Blyer: I have no further question, your Honor.

Mr. Mangan: No further questions.

Mr. Liberstein: No questions.

Judge Theeman: Thank you very much, Mr. Scotto.

(Whereupon, the witness was excused, at this time.)

Judge Theeman: Anything further, Mr. Blyer?

Mr. Blyer: May I have just one minute, your Honor?

Judge Theeman: Yes.

Mr. Blyer: I have nothing further, your Honor.

* * * * *

[174]

* * * * *

Judge Theeman: But before we get to that point, both of you—all of you are now resting?

Mr. Blyer: Yes, your Honor.

Renewal of Motions to Dismiss

Mr. Mangan: Yes, your Honor.

Mr. Liberstein: Yes, your Honor.

Judge Theeman: Okay.

Mr. Liberstein: Now, for the sake of the record,
[175] Judge Theeman, I move to dismiss again
based on all of the evidence—

Judge Theeman: The same decision as before, Mr.
Liberstein.

[176]

Mr. Mangan: Could I just—with respect to the
Respondent, could I just move to dismiss?

I'm joining in what Mr. Liberstein has said.

[182]

Judge Theeman: * * * There is nothing further—
there being nothing further before this hearing, the
hearing is closed. I thank you very much.

(Whereupon, the hearing was closed at 12:10 p.m.)

General Counsel's Exhibit 1(a)

| | | | |
|---|--|---|---------------------------|
| FORM NLRB-503 (12-65) | | Form Approved Budget Bureau No. 64-R003.12 | |
| UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS | | | |
| INSTRUCTIONS: File on original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring. | | DO NOT WRITE IN THIS SPACE | |
| | | Case No. | 29-CB-1352-1 |
| | | Date Filed | 10-19-72 |
| 1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT | | | |
| a. Name | LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS | b. Union Representative to Contact | c. Phone No. |
| | | Joseph Mangan | |
| d. Address (Street, city, State and ZIP code) | | | |
| 32-43 49th Street, Long Island City, New York 11103 | | | |
| a. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) <u>(1)(A)</u> <small>(List Subsections)</small> of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act. b. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) | | | |
| <p>Since on or about February 19, 1972, and continuing to date, the above-named labor organization by its officers, agents and representatives has maintained in effect an employer financed pension plan for employees of White Rock Beverage Company, which provides, inter alia that benefits shall be based upon length of membership within the union, and has denied benefits to George R. Lightfoot because he did not have a sufficient period of time as a union member.</p> <p>By these and other acts, the above-named labor organization has restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act.</p> | | | |
| 3. Name of Employer | | | |
| WHITE ROCK BEVERAGE COMPANY | | | |
| 4. Location of Plant Involved (Street, city, State and ZIP code) | | | |
| 215 Van Dyke Street, Brooklyn, New York 11229 | | | |
| 5. Type of Establishment (Factory, mine, wholesaler, etc.) | 6. Identify Principal Product or Service | 7. No. of Workers Employed | |
| Factory | Liquor | | |
| 8. Full Name of Party Filing Charge | | | |
| George R. Lightfoot | | | |
| 9. Address of Party Filing Charge (Street, city, State and ZIP code) | | | |
| 119 Garland Court, Brooklyn, New York 11229 | | | |
| 10. Telephone No. | | | |
| 833-6763 | | | |
| 11. DECLARATION | | | |
| I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief. | | | |
| By <u>/s/ George R. Lightfoot</u> (Signature of representative or person making charge) | | An individual (Title or office, if any) | |
| Address <u>119 Garland Court</u> <u>Brooklyn, New York 11229</u> | | <u>833-6763</u> (Telephone number) | <u>10/19/72</u> (Date) |
| WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) | | | |

General Counsel's Exhibit 1(c)

FORM NLRB-508
(12-68)Form Approved
Budget Bureau No. 64-R003.12UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

261-B-1352-2

Date Filed

10-19-72

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

| | | |
|---|---|--------------|
| a. Name LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA | b. Union Representative to Contact Joseph Mangan | c. Phone No. |
|---|---|--------------|

d. Address (Street, city, State and ZIP code)

32-43 49th Street, Long Island City, New York 11103

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1)(A) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, address, place involved, dates, places, etc.)

Since on or about February 19, 1972, and continuing to date, the above named labor organization by its officers, agents and representatives has maintained in effect an employer-financed pension plan for employees of White Rock Beverage Company, which provides, inter alia that benefits shall be based upon length of membership within the union, and has denied benefits to Anthony Palumbo he did not have a sufficient period of time as a union member.

By these and other acts, the above-named labor organization has restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act.

3. Name of Employer
WHITE ROCK BEVERAGE COMPANY

4. Location of Plant Involved (Street, city, State and ZIP code)

215 Van Dyke Street, Brooklyn, New York 11231

| | | |
|--|---|----------------------------|
| 5. Type of Establishment (Factory, mine, wholesale, etc.) Factory | 6. Identify Principal Product or Service Beverages | 7. No. of Workers Employed |
|--|---|----------------------------|

| | |
|--|-------------------|
| 8. Full Name of Party Filing Charge KMMR/EXRX ANTHONY PALUMBO | 10. Telephone No. |
|--|-------------------|

| | |
|---|----------|
| 9. Address of Party Filing Charge (Street, city, State and ZIP code) 967 Willoughby Avenue, Brooklyn, N.Y. 11221 | GL5-9023 |
|---|----------|

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By A. Palumbo 10-19-72
(Signature of representative or person making charge) Individual
(Title or office, if any)

| | | |
|--|--------------------------------|--------------------|
| Address 967 Willoughby Avenue Brooklyn, N.Y. 11221 | CL5-9023 (Telephone number) | 10/19/72 (Date) |
|--|--------------------------------|--------------------|

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

General Counsel's Exhibit 1(e)

| | | | |
|--|--|---|----------------------------|
| FORM NLRB-503 (12-68) | | Form Approved Budget Bureau No. 64-R008.12 | |
| UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS | | | |
| INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring. | | DO NOT WRITE IN THIS SPACE Case No. 29-CB-1352-3 Date Filed 10-19-72 | |
| I. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT | | | |
| e. Name LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS <small>IBT</small> f. Address 32-43 49th Street, Long Island City, New York 11103 | | b. Union Representative to Contact Joseph Mangan | c. Phone No. |
| g. The above-named organization(s) or its agent(s) has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1)(A) <small>(1)(1), Subsection(s)</small> of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act. | | | |
| h. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) | | | |
| <p>Since on or about February 19, 1972, and continuing to date, the above named labor organization by its officers, agents and representatives has maintained in effect an employer-financed pension plan for employees of WHITE ROCK BEVERAGE COMPANY, which provided, <i>inter alia</i> that benefits shall be based upon length of membership within the union, and has denied benefits to Tony Greco because he did not have a sufficient period of time as a union member.</p> <p>By these and other acts, the above-named labor organization has restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act.</p> | | | |
| i. Name of Employer WHITE ROCK BEVERAGE COMPANY | | | |
| j. Location of Plant Involved (Street, city, State and ZIP code) 215 Van Dyke Street, Brooklyn, New York 11231 | | | |
| k. Type of Establishment (Factory, mine, wholesaler, etc.) Factory | | l. Identify Principal Product or Service Beverages | m. No. of Workers Employed |
| n. Full Name of Party Filing Charge TONY V. GRECO | | | |
| o. Address of Party Filing Charge (Street, city, State and ZIP code) 347 Driggs Avenue, Brooklyn, New York | | p. Telephone No. KV7-1848 | |
| II. DECLARATION | | | |
| I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief. | | | |
| By <u>/s/ Tony V. Greco</u> <small>(Signature of representative or person making charge)</small> | | As individual <small>(Title or office, if any)</small> | |
| Address 347 Driggs Avenue Brooklyn, New York | | q. Telephone number KV7-1848 | r. Date 10/19/72 |
| WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) | | | |

General Counsel's Exhibit 1(g)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA

and

GEORGE LIGHTFOOT, An Individual

Case No. 29-CB-1352-1

and

ANTHONY PALUMBO, An Individual

Case No. 29-CB-1352-2

and

TONY GRECO, An Individual

Case No. 29-CB-1352-3

and

WHITE ROCK BEVERAGES INC.

Party to the Contract

and

PENSION FUND OF NEW YORK CITY TRUCKING
INDUSTRY LOCAL 807.

Party in Interest

ORDER CONSOLIDATING CASES, COMPLAINT AND NOTICE OF HEARING

It having been charged in Case No. 29-CB-1352-1 by George Lightfoot, an individual, in Case No. 29-CB-1352-2 by Anthony Palumbo, an individual, and in Case No. 29-CB-1352-3 by Tony Greco, an individual, herein called Lightfoot, Palumbo, and Greco respectively, that Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations- Series 8, as amended, Section 102.15 hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The Charge in Case No. 29-CB-1352-1 was filed by Lightfoot on October 19, 1972, and served by registered mail upon Respondent on or about October 19, 1972.

(b) The Charge in Case No. 29-CB-1352-2 was filed by Palumbo on October 19, 1972, and served by registered mail upon Respondent on or about October 19, 1972.

(c) The Charge in Case No. 29-CB-1352-3 was filed by Greco on October 19, 1972, and served by registered mail upon Respondent on or about October 19, 1972.

2. White Rock Beverages Inc., is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware.

3. (a) White Rock Beverages Inc. is a wholly owned subsidiary of White Rock Corporation.

(b) White Rock Beverages Inc. and White Rock Corporation, herein together referred to as White Rock, are, and at all times material herein have been, affiliated businesses with common officers, directors and operators and constitute a single integrated business enterprise; the said directors and operators formulate and administer a common labor policy for the aforesigned companies, affecting the employees of said companies.

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General Counsel's Exhibit 1(g)

4. At all times material herein White Rock Corporation has maintained its principal office and sole plant in the City of Boston and State of Massachusetts where it is, and has been at all times material herein, engaged in the manufacture, sale and distribution of beverages and related products.

5. During the past year, which period is representative of its annual operations generally, White Rock Corporation, in the course and conduct of its business operations, manufactured, sold and distributed at its Boston, Massachusetts place of business, products valued in excess of \$500,000, of which products valued in excess of \$50,000 were shipped from said place of business in interstate commerce directly to states of the United States other than the state in which it is located.

6. White Rock is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

7. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

8. On or about November 1, 1971, White Rock Beverages Inc. and Respondent executed, and since that date have maintained in effect and enforced a collective-bargaining agreement relating to hire, tenure, terms and conditions of employment of employees of White Rock Beverages Inc. at its Bronx, New York plant whereunder, inter alia, White Rock Beverages Inc. agreed to make contributions to the Pension Fund of the New York City Trucking Industry Local 807, herein called the Pension Fund, on behalf of employees at its Bronx plant.

9. At all times material herein since on or about February 28, 1972, the Rules and Regulations of the Pension Fund contained inter alia, the following provisions:

ARTICLE III - PENSION CREDITS

Section 1. PENSION CREDITS GENERALLY. Entitlement to a pension under this Plan is determined in part on the accumulation of Pension Credits. Pension Credits are granted on the basis of employment covered by the Pension Fund. Credits are granted in quarter-year units. A Pension Quarter is defined as any period of three consecutive months starting August 1st, November 1st, February 1st or May 1st. A year of Pension Credits consists of any four quarters of Pension Credit.

Pension Credits shall be granted only as set forth in this Article.

There are two bases for securing Pension Credits for the period before September 1, 1950 and another basis for accumulating Pension Credits for the period on and after September 1, 1950. For the latter period, it is purely a question of a certain minimum amount of work in Covered Employment.

Section 2. PAST SERVICE.

(a) It is recognized that it would be difficult for many, if not most, of the Employees to establish their periods of Covered Employment prior to January 1, 1937. Consequently, anyone who was a member of Local 807 prior to the period commencing January 1, 1937 may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 807 during this period. For this purpose, a Pension Quarter shall be credited if the Employee was a member for any part of the quarter. Pension Credit shall also be granted for any period of time that an employee can prove that he worked in covered employment through employer records.

10. By the terms of Article III, Section 2(a) of the Pension Fund's Rules and Regulations set forth above in paragraph 9 a preference is accorded in accumulating pension credits to employees who were members of Respondent

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General Counsel's Exhibit 1(g)

prior to January 1, 1937 over employees who were not, or did not become, members of Respondent prior to January 1, 1937.

11. By the acts described above in paragraphs 9 and 10 and by each of said acts, Respondent restrained and coerced, and is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

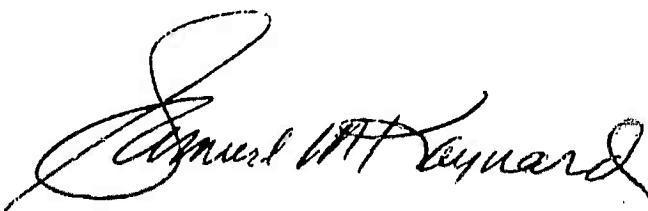
12. By the acts described above in paragraphs 9 and 10 and by each of said acts, Respondent caused and attempted to cause, and is causing and attempting to cause White Rock to discriminate against its employees in violation of Section 8(a)(3) of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and Section 2(6) and (7) of the Act.

13. The acts of Respondent described above in paragraphs 9 and 10, occurring in connection with the operations of White Rock described above in paragraphs 2 through 6, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 29th day of January, 1973, at 11:00 a.m. at 16 Court Street, Fourth Floor, in the Borough of Brooklyn, State of New York a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the Consolidated Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 15th day of December, 1972.



Samuel M. Kaynard
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by a Trial Examiner of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D. C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Trial Examiner, upon the joint request of the parties, will conduct a "pre-hearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Trial Examiner conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Trial Examiner for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Trial Examiner who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Trial Examiner will be considered unless received by the Chief Trial Examiner in Washington, D. C. (or, in cases under the San Francisco, California branch office of Trial Examiners, the Associate Chief Trial Examiner in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Trial Examiner or Associate Chief Trial Examiner, as the case may be. All briefs or proposed findings filed with the Trial Examiner must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Trial Examiner will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Trial Examiner's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Trial Examiner's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Trial Examiner will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

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General Counsel's Exhibit 1(o)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA

and

GEORGE LIGHTFOOT, An Individual

Case No. 29-CB-1352-1

and

ANTHONY PALUMBO, An Individual

Case No. 29-CB-1352-2

and

TONY GRECO, An Individual

Case No. 29-CB-1352-3

and

WHITE ROCK BEVERAGES INC.

Party to the Contract

and

PENSION FUND OF NEW YORK CITY TRUCKING
INDUSTRY - LOCAL 807,

Party in Interest

ANSWER OF TRUCK DRIVERS LOCAL UNION
NO. 807, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Respondent, Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called "Respondent"), by its attorney J. Warren Mangan, submits this Answer to the Complaint, dated December 15, 1972, issued herein against Respondent.

As and for its Answer, Respondent alleges as follows:

FIRST: Admits, upon information and belief, the allegations contained in paragraphs 1(a), (b), (c), 2, 3, 4, 5, 6, 7, 8 and 9 of the Complaint.

SECOND: Denies each and every allegation contained in paragraphs 10, 11, 12 and 13 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE
AND COMPLETE DEFENSE TO THE
COMPLAINT, RESPONDENT ALLEGES:

THIRD: That the Charge in Case No. 29-CB-1352-1, filed by George Lightfoot on October 19, 1972, was dismissed by the Regional Director on December 15, 1972. Charging Party appealed and the Office of the General Counsel denied that appeal on January 24, 1973.

FOURTH: That the Charge in Case No. 29-CB-1352-2, filed by Anthony Palumbo on October 19, 1972, was dismissed by the Regional Director on December 15, 1972. Charging Party appealed and the Office of the General Counsel denied that appeal on January 26, 1973.

FIFTH: That the Charge in Case No. 29-CB-1352-3, filed by Tony Greco on October 19, 1972, was dismissed by the Regional Director on December 15, 1972. Charging Party appealed and the Office of the General Counsel denied that appeal on January 24, 1973.

SIXTH: That the allegations set forth in paragraphs 10, 11, 12 and 13 of the Complaint are completely removed from allegations which gave rise to Charges 29-CB-1352-1, 2 and 3. It is the Regional Director that is initiating this Complaint on his motion in violation of Section 10(b) of the Act. The Complaint should be dismissed since it is not supported by any Charge.

AS AND FOR A SECOND AFFIRMATIVE
AND COMPLETE DEFENSE TO THE COMPLAINT,
RESPONDENT ALLEGES:

SEVENTH: That the alleged "preference" favoring members of Respondent prior to January 1, 1937 cannot be considered to be discriminatory in regard to hire, tenure or any term or condition of employment to encourage or discourage union membership, nor to restrain or coerce employees in the exercise of Section 7 rights; and it therefore cannot be said to violate Section 8(b)(1)(A) or (2) or Section 8(a)(3) of the Act.

AS AND FOR A THIRD AFFIRMATIVE
AND COMPLETE DEFENSE TO THE
COMPLAINT, RESPONDENT ALLEGES:

EIGHTH: The most creditable administrative basis available to the Trustees of the Pension Fund of the New York City Trucking Industry - Local 807 (Pension Fund) to confirm eligibility for past service credit prior to January 1, 1937 are union and employer records. Article III, Section 2(a) of the Pension Fund's Rules and Regulations provides that the Trustees "may", at their sole discretion give pension credit for that period that a pension applicant was a member of Respondent prior to January 1, 1937 and "shall" grant pension credit for that period that a pension applicant can prove that he worked in covered employment prior to January 1, 1937 through employer records. There being no presumption favoring membership in Respondent provided for in Article III, Section 2(a) of the Pension Fund's Rules and Regulations it cannot be said to violate Section 8(b)(1)(A) or (2) or Section 8(a)(3) of the Act.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed with prejudice.

Dated: Queens, New York
April 4, 1973


J. Warren Mangah, Esq.

Attorney for Respondent
Truck Drivers Local Union No. 807,
International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 1973, a copy of this Answer for Respondent was mailed by first class mail, postage prepaid, to White Rock Beverages, Inc., 215 Van Dyke Street, Brooklyn, New York and Zelby, Burstein, Liberstein & Hartman, Esqs. Attention, Herbert Burstein, Esq., One World Trade Center, New York, New York as attorneys for the Pension Fund of the New York City Trucking Industry - Local 807.



J. Warren Mangan, Esq.



General Counsel's Exhibit 2(a)
NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11201

Telephone 596-3525

December 15, 1972

**Mr. George Lightfoot
 119 Garland Court
 Brooklyn, New York 11229**

**Re: Local 807, I. B. T.
 (White Rock Beverage Co.)
 Case No. 29-CB-1352-1**

Dear Mr. Lightfoot:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

The investigation failed to establish that you have been unlawfully denied pension credits for service with White Rock Beverage Company because you were not a member of Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Rather, the evidence tends to show that pursuant to the Pension Plan's rules and regulations you have been denied past service pension credits for the period you were not in the unit of employees covered by the collective bargaining agreement between your employer and Local 807, Hu-Car Carriers, Inc., 187 NLRB No. 117. I am, therefore, refusing to issue a complaint insofar as your charge alleges that you have been unlawfully denied benefits under the Pension Plan because you were not a Local 807 member. The remaining portions of your charge are being processed further.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19) you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D.C. 20570, and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business on December 28, 1972. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request should be submitted to me. **SEE NOTICE ATTACHED HERETO RE APPEAL, PURSUANT TO BOARD RULE 102.19 (TO CHARGING PARTY ONLY).**

Registered Mail
 Return Receipt Requested

CC: General Counsel
 National Labor Relations Board
 Washington, D. C. 20570
 Local 807, I.B.T., 32-43 49th St., Long Island City, New York 11103

Very truly yours,
Samuel M. Kaynard
 Samuel M. Kaynard
 Regional Director



NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11201

Telephone 596-3535

December 15, 1972

Mr. Anthony Palumbo
987 Willoughby Avenue
Brooklyn, New York

No. Local 807, I.B.C.
(White Rock Beverage Co.)
Case No. 29-RC-1332-2

Dear Mr. Palumbo:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

The investigation failed to establish that you have been unlawfully denied pension credits for service with White Rock Beverage Company because you were not a member of Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Rather, the evidence tends to show that pursuant to the Pension Plan's rules and regulations you have been denied post service pension credits for the period you were not in the unit of employees covered by the collective bargaining agreement between your employer and Local 807, McCar Services, Inc., 187 MEA No. 117. I am, therefore, refusing to issue a complaint; instead as your charge alleges that you have been unlawfully denied benefits under the Pension Plan because you were not a Local 807 member, the remaining portions of your charge are being processed further.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19) you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D. C. 20570, and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C. by the close of business on December 20, 1972. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request should be submitted to me.

for tted
 Registered Mail
Return Receipt Requested

cc: General Counsel
National Labor Relations Board
Washington, D. C. 20570
Local 807, I.B.C., 32-43 49th Street, Long Island City, New York 11103

Very truly yours,

Samuel D. Kaynard
Regional Director

Exhibit



NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11201

Telephone 596-3535

December 15, 1972

Mr. Tony Greco
 547 Driggs Avenue
 Brooklyn, New York

Re: Local 807, I.B.T.
 (White Rock Beverage Co.)
 Case No. 29-CB-1352-3

Dear Mr. Greco:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

The investigation failed to establish that you have been unlawfully denied pension credits for service with White Rock Beverage Company because you were not a member of Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Rather, the evidence tends to show that pursuant to the Pension Plan's rules and regulations you have been denied past service pension credits for the period you were not in the unit of employees covered by the collective bargaining agreement between your employer and Local 807, Mu-Gar Carriers, Inc., 187 MEA No. 117. I am, therefore, refusing to issue a complaint insofar as your charge alleges that you have been unlawfully denied benefits under the Pension Plan because you were not a Local 807 member. The remaining portions of your charge are being processed further.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19) you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D. C. 20570, and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C. by the close of business on December 26, 1972. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request should be submitted to me. SEE NOTICE ATTACHED HERETO AS APPEAL PURSUANT TO BOARD RULE 102.19 (TO CHARGING PARTY ONLY).

Registered Mail
 Return Receipt Requested

Very truly yours,

Samuel M. Laynard
 Samuel M. Laynard
 Regional Director

CC: General Counsel
 National Labor Relations Board
 Washington, D. C. 20570
 Local 807, I.B.T., 32-43 49th Street, Long Island City, New York 11103



NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

January 24, 1973

Re: Local 807, I. B. T.
 (White Rock Beverage Co.)
 Case No. 29-CB-1352-1

Mr. George R. Lightfoot
 119 Garland Court
 Brooklyn, New York 11229

Dear Mr. Lightfoot:

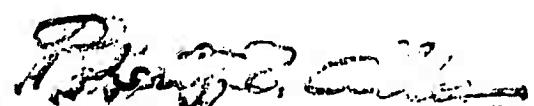
Your appeal in the above matter has been duly considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of December 15, 1972. The only discovered instances of employees' having received pension credit for time during which they were not covered under a Union collective bargaining agreement could not be shown to have been based on any considerations other than clerical error which the Union has been trying to correct.

Very truly yours,

Peter G. Nash
 General Counsel

By _____


 Robert E. Allen
 Director, Office of Appeals

cc: Director, Region 29

Local 807, I. B. T.
 32-43 49th Street
 Long Island City, New York 11103

CERTIFIED MAIL

Appeal from refusal to issue complaint based on a 8(b)(1)(A) charge filed on October 19, 1972, by George R. Lightfoot, an individual alleging that certain provisions in the pension fund agreement between the Company and the Union are discriminatory on their face and that Lightfoot was denied benefits on the basis of his prior lack of union membership in the union.

1/ The Region has found merit to the 8(b)(1)(A) allegations that certain provisions in the pension fund agreement are illegal, however, it refused to issue complaint alleging that the denial of benefits was unlawfully motivated.

Case handled by Meyer/Kaplan



NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570 JAN 26 1973

Re: Local 807, I. B. T.
(White Rock Beverage Co.)
Case No. 29-CB-1352-2

Mr. Anthony Palumbo
967 Willoughby Avenue
Brooklyn, New York

Dear Mr. Palumbo:

Your appeal in the above matter has been duly considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of December 15, 1972. The only discovered instance of employees' having received pension credit for time during which they were not covered under a Union collective bargaining agreement could not be shown to have been based on any considerations other than clerical error which the Union has been trying to correct.

Very truly yours,

Peter G. Nash
General Counsel

By _____

Peter G. Nash
Robert E. Allen
Director, Office of Appeals

cc: Director, Region 29

Local 807, I. B. T.
32-43 49th Street
Long Island City, New York 11103

CERTIFIED MAIL

Re: Case No. 29-CB-1352-3

Appeal from refusal to issue complaint 1/ based on a 8(b)(1)(A) charge filed on October 19, 1972, by Anthony Palumbo, an individual, alleging that the certain provisions in the pension fund agreement between the Company and the Union are discriminatory on their face and that Palumbo was denied benefits on the basis of his prior lack of Union memberships in the Union.

This case was handled by Meyer/Kaplan.

1/ The Region has found merit to the 8(b)(1)(A) allegation that certain provisions in the pension fund agreement are illegal.



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General Counsel's Exhibit 3(c)

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570 JAN 24

Re: Local 807, I. B. T.
(White Rock Beverage Co.)
Case No. 29-CB-1352-3

Mr. Tony Greco
547 Driggs Avenue
Brooklyn, New York 11211

Dear Mr. Greco:

Your appeal in the above matter has been duly considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of December 15, 1972. The only discovered instances of employees' having received pension credit for time during which they were not covered under a Union collective bargaining agreement could not be shown to have been based on any considerations other than clerical error which the Union has been trying to correct. Furthermore, in the absence of evidence that any employees had been given pension credit based on membership above, without covered employment, it could not be established that the computation of your pension entitlement was unlawful. See Nu-Car Carriers, Inc., 187 NLRB No. 117 (Slip op. pp. 7-8).

Very truly yours,

Peter G. Nash
General Counsel

By

Robert E. Allen
Director, Office of Appeals

cc: Director, Region 29

Local 807, I. B. T.
32-43 49th Street
Long Island City, New York 11103

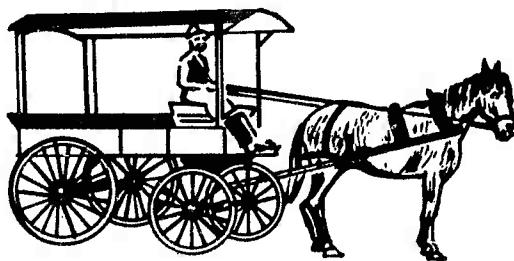
CERTIFIED MAIL

Re: Case No. 29-CB-1352-3

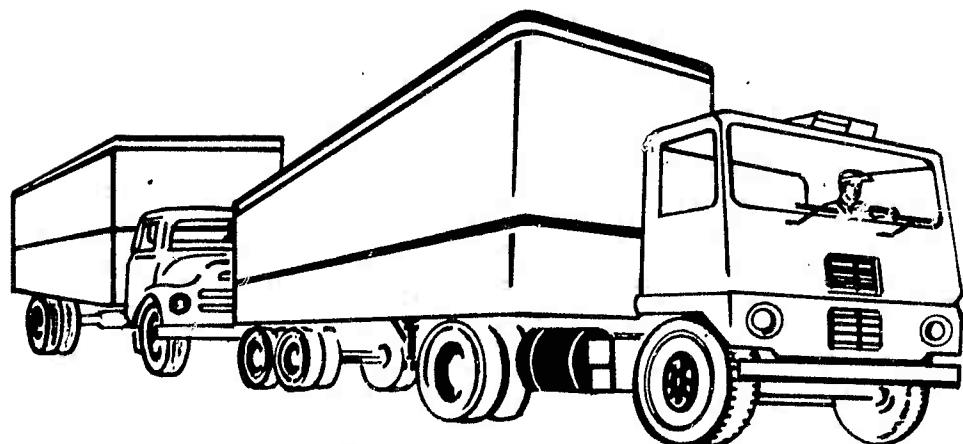
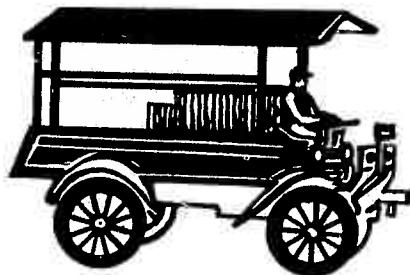
Appeal from refusal to issue complaint 1/ based on an 8(b)(1)(A) charge filed on October 19, 1972, by Tony V. Greco, an individual, alleging that the certain provisions in the pension fund agreement between the Company and the Union are discriminatory on their face and that Greco was denied benefits on the basis of his prior lack of Union membership in the Union.

This case was handled by Meyer/Kaplan.

1/ The Region has found merit to the 8(b)(1)(A) allegation that certain provisions in the pension fund agreement were illegal, however, it refused to issue complaint alleging that the denial of benefits was unlawfully motivated.



**PENSION
FUND
OF
N. Y. C.
TRUCKING
INDUSTRY**



LOCAL 807

QUESTIONS AND ANSWERS ON THE PENSION FUND

The following questions and answers are only brief explanations of the most important provisions of the Plan. The full Rules and Regulations determine the benefits available to each man and nothing in this explanation is intended to change the Rules and Regulations. The full text of the Pension Plan is given in the latter portion of this booklet.

Who is covered by the Pension Plan?

All men working under a collective bargaining agreement between the employers and Local 807, which requires contributions to the Pension Fund are covered by the Plan.

How many kinds of benefits are provided under the Plan?

There are ten types of benefits, as follows:

- (1) A Normal Pension
- (2) A Reduced Pension
- (3) An Early Retirement Pension
- (4) A Disability Pension
- (5) A Twenty Five Year Pension
- (6) A Thirty Year Pension
- (7) A Pro-Rata Pension
- (8) A Social Security Level Income Pension
- (9) A Sixty Month Guarantee
- (10) A Death Benefit

When may a man retire on a Normal Pension?

A man may retire on a Normal Pension of \$300 a month when he has attained age 65 and has 25 years of pension credit.

When may a man retire on a Reduced Pension?

A man who has attained age 65 and who has at least 15 years of pension credit, but does not have enough years of credit to make him eligible for a Normal Pension, may retire on a Reduced Pension. The amount of the Reduced Pension to which a man is entitled may be determined on the basis of the table on page 14.

For example, if a man reaches age 65 and retires on December 1, 1970, having accumulated 20 years of pension credit, his pension benefit would be \$240 a month for the rest of his life. If, however, he has credit for only 15 years at that time, his pension would be \$180 a month.

When may a man retire on an Early Retirement Pension?

A man who has at least 15 years of pension credit and wants to retire between the age of 55 and 65 may do so on an Early Retirement Pension. The monthly amount of the Early Retirement Pension is determined as follows:

- (1) Figure the amount of the Normal or Reduced Pension to which the man would be entitled if he were 65.
- (2) Reduce this amount by one-half of 1% for each month by which the man is younger than 65 on the last day of the last quarter in which he last earned Pension Credits.
- (3) The resulting figure is rounded up to the next highest 50¢, if it is not already a multiple of 50¢.

When may a man retire on a Disability Pension?

A man, with at least 10 years of pension credit and who has not yet attained age 65, may retire on a Disability Pension if he becomes disabled and is unable to work in Covered Employment.

The monthly amount of Disability Pension is based upon the employee's attained age and years of Pension Credits as under the Early Retirement provisions. However, in cases where the employee is younger than age 55 or has between 10 and 15 years of Pension Credits an assumption will be made in the benefit calculation that the employee had attained age 55 or had 15 years of Pension Credit, whichever is applicable — or in some instances both assumptions will be made to provide a minimum Disability Pension.

When may a man retire on a Twenty-Five Year Pension?

A man may retire on a Twenty Five Year Pension of \$225 per month on and after September 1, 1970, provided he has accumulated twenty-five years of Pension Credit, is at least age 50 and has earned at least one quarter of pension credit in the three month period ended July 31, 1970 or thereafter.

When may a man retire on a Thirty Year Pension?

A man may retire on a Thirty Year Pension of \$300 a month on and after September 1, 1970 regardless of his age, provided he has accumulated thirty years of pension credit and he has earned at least one quarter of pension credit in the three month period ended July 31, 1970 or thereafter.

Is there any arrangement for a man to get a pension if his work is divided among Teamster Locals?

Yes. A number of Pension Funds in this area have agreed on a Pro Rata Pension. By doing so, they have agreed to credit service performed in the jurisdiction of the other Fund toward a Pro Rata Pension. The Pension Funds which

have reciprocal agreements with Local 807 are those identified with the following Teamsters Local Unions:

| | | | | | | | |
|-----|-----|-----|-----|-----|-----|-----|-----|
| 27 | 202 | 282 | 295 | 478 | 560 | 617 | 641 |
| 701 | 707 | 804 | 806 | 814 | 816 | 824 | 854 |

and Local Union 1730 of the ILA.

Furthermore, because Local 807 has signed the National Reciprocal Agreement, credited service performed in the jurisdiction of many additional Teamster Pension Funds will also be recognized toward a Pro Rata Pension. Please refer to page 29 for a list of the Pension Funds which participate in this National Reciprocal Agreement.

The method of calculating the benefit under the local agreements is described in Article 11-A, Section 5. The method of calculating the benefit under the National Reciprocal Agreement is described in Appendix A beginning on page 31. If you desire more information, consult the Fund Office.

Does the Plan include any provision that would enable a man who retires before age 65 to receive a higher monthly pension until age 65 when he applies for Social Security Benefits?

Yes. A Social Security Level Income Option is provided. The reason it is called a Social Security Level Income Option is that, at the time a man retires he may elect to receive a higher benefit amount up to age 65 and a lower benefit amount thereafter so that after 65 the combined payments from the Fund and from Social Security will be approximately the same as he received before 65. These amounts are determined actuarially. However, the higher benefit amount is not payable unless a man is at least 55 years old and he chooses the Option when he retires.

How does the Social Security Level Income Option work?

As an illustration, let us suppose a man with at least 30 years of service retires at age 60. This man is entitled to a Thirty Year Pension of \$300.00 a month, but as the time he retires he decides to elect the Option. Under the provisions of the Option, his monthly benefit is calculated to be \$367.00. This amount is paid to him through the month he becomes 65. Thereafter, a reduced benefit amounting to \$267.00 a month is paid to him for life.

Is there a guarantee of benefits?

Yes, the 60 Month Guarantee provides that if a Pensioner other than a Disability Pensioner dies before receiving 60 times his basic monthly benefit the remaining balance will be paid to his wife until the equivalent of 60 basic payments are made.

Also, if an employee who has met the age and service requirements for a Normal, Reduced, Early Retirement, 25 or 30 Year Pension dies his wife will receive 60 monthly payments of the basic benefit he would have been entitled to had he retired on the date of his death.

If the surviving wife should die, or if there is none, any remaining balance will be divided equally among the surviving dependent children, as defined by the Social Security Act.

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An important rule to remember is that the Sixty Month Guarantee applies to the basic pension amount. If the higher benefit payable under the Option is elected, the Sixty Month Guarantee ends when the total equals to 60 times the basic pension is paid. Under the Option, this will occur before the expiration of 60 months.

Is there any other benefit in the event of death?

Yes, but it is limited to pensioners. A Death Benefit of \$1,000.00 from the Pension Fund and an additional \$500.00 from the Welfare Fund shall be paid to the surviving widow or to a funeral home for burial expenses of the Pensioner. This Death Benefit is in addition to any benefits payable under the Sixty Month Guarantee. The Death Benefit is not payable if a Pensioner is eligible for the life insurance benefit under the Welfare Fund of the N.Y.C. Trucking Industry — Local 807.

A Pensioner has the option, at his retirement, to insure himself and his dependents for the Medical-Surgical benefits provided by the Welfare Fund in lieu of the \$1,000.00 Death Benefit payable from the Pension Fund. Coverage will be continued up to the first of the month in which the Pensioner or spouse each attains age 65, or upon death of Pensioner, whichever occurs first.

On what basis is a man credited with years of service?

Service is credited on the basis of work in Covered Employment (the employment for which the employer is required to contribute to the Pension Fund). There are some limited exceptions to this rule as in cases of military service or disability.

Exactly how much work in Covered Employment is required to establish pension credits?

Work in Covered Employment is credited on the basis of pension quarters. A pension quarter is any one period of three consecutive months beginning on August 1, November 1, February 1, or May 1.

A pension quarter is credited to a man if he worked in Covered Employment for at least 25 days in that quarter. (For the period prior to December 1, 1954, this requirement was 36 days.)

What is meant by Covered Employment?

Covered Employment is work for an employer who is obligated by a collective bargaining agreement to contribute to the Pension Fund.

For the period before September 1, 1950 it may include work that was covered by a collective bargaining agreement with Local 807, and may also include work not covered by a Local 807 contract provided it was a job for which Local 807 bargains and the employer participated in the plan on September 1, 1950.

If a man is not working in the industry because of a draft or military service in time of war, or because he is disabled, does he lose credit for that period of time?

Not necessarily; the Pension Plan contains provisions which grant a man credit for periods of military service and for limited periods of disability.

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General Counsel's Exhibit 4

If a man goes out of the industry, can he return at a later date and still be covered by the Pension Plan?

Generally speaking, if a man leaves Covered Employment for a substantial period of time, he will lose his standing under the Pension Plan when he returns. He would have to start all over again as if he were an entirely new employee in order to build up credit under the Pension Plan.

More specifically, if a man does not earn any credit in a period of twelve consecutive quarters, then his previous credits under the Pension Plan are cancelled. When and if he returns to the industry, he must begin again to accumulate credits as if he were a new employee.

If a man is not active in the industry because of disability, does he lose his standing in the Pension Plan?

No, not necessarily. The Plan contains provisions which safeguard a man's right to return after a prolonged absence if it was due to particular hardship circumstances, which are described in the Plan.

Are a man's pension benefits ever vested?

Yes. Once a man has accumulated 25 years or more of pension credits regardless of his age or once has fulfilled the age and service requirements for a pension benefit he cannot suffer a "break in service" and lose his prior pension credits due to an extended period of time in which he does not work in Covered Employment.

He would be entitled to a pension benefit based upon his age and/or service upon proper application and at the level in effect during the quarter in which he last earned credit.

Will pension benefits be affected in any way by Social Security Benefits?

No. Benefits from this Pension Fund are over and above any benefits received from Social Security.

When does a man receive his first benefit payment?

The first monthly benefit payment will be payable to a man for the calendar month immediately following determination of his eligibility, approval of his application by the Trustees and retirement as defined in the rules. The last benefit payment will be payable for the month in which the pensioner dies.

How does an employee apply for pension benefits?

An employee should make written application to the Pension Fund at least one month in advance of the month in which he plans to retire. He must file his application on forms furnished by the Fund Office.

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General Counsel's Exhibit 4

Suppose a man meets all the requirements for a pension but fails to make application until several years after his retirement. Does this man lose his right to pension?

No. The rule is that once a man is eligible for a pension he shall not suffer the loss of a pension benefit to which he might otherwise have been entitled to had he made application at the time of his retirement. However, the benefit amount shall be based on the benefit level in effect at the time that he earned his last quarter of pension credit.

This has been no more than a brief and very general explanation of the most important provisions of the Pension Plan. No general explanation such as this can adequately explain all the details of the Plan. Nothing in this statement is meant to interpret, extend or change in any way the rules or regulations expressed in the Plan itself.

Accordingly, your rights, if you are covered by this Pension Plan can only be determined by consulting the Pension Plan itself. Further information, if necessary, may be secured by inquiring at the Fund Office or the Union Office. For your convenience, a complete copy of the Pension Plan is printed in the next section of this booklet.

**PENSION FUND OF NEW YORK CITY TRUCKING INDUSTRY
LOCAL 807**

Rules and Regulations for the Pension Plan

By Resolution of July 16, 1970, the Board of Trustees of the Pension Fund of the NYC Trucking Industry — Local 807, adopts the following Rules and Regulations for the Plan effective September 1, 1970, as an amendment to the Rules and Regulations adopted December 26, 1951 and as subsequently amended.

ARTICLE I. DEFINITIONS

Section 1. PENSION FUND. "Pension Fund" means the Pension Fund of the New York City Trucking Industry — Local 807, established under the Agreement and Declaration of Trust dated December 1, 1950 and as subsequently amended.

Section 2. BOARD OF TRUSTEES. "Board of Trustees" or "Trustees" means the Board of Trustees established under the Agreement and Declaration of Trust dated December 1, 1950, as constituted from time to time in accordance with the provisions of said Agreement and Declaration of Trust as amended.

Section 3. LOCAL 807. "Local 807" means Truck Drivers Local Union No. 807, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Section 4. EMPLOYER. "Employer" means any Employer obligated by his collective bargaining agreement with Local 807 to contribute to the Pension Fund. The term "Employer" shall also mean Local 807, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and the Pension Fund of the New York City Trucking Industry — Local 807 with respect to full-time officers and salaried employees, provided they are contributing to the Fund for all such employees at the rate established for other employers.

Section 5. EMPLOYEE. "Employee" means any persons employed by an Employer in a bargaining unit for which the Employer is obligated by his agreement with Local 807 to contribute to the Pension Fund. The term "Employee" shall also mean any full-time officer or salaried employee of Local 807, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and the Pension Fund of the New York City Trucking Industry — Local 807, provided contribution is being made to the Fund on behalf of such employee by the Pension Fund.

Section 6. COVERED EMPLOYMENT. "Covered Employment" means employment of an Employee by an Employer, as those terms have been defined. "Covered Employment" shall also be understood to include fulltime service as an officer or employee of Local 807 or of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, provided that contributions are made to the Fund with respect to such service equal in rate to the rate of contributions contemporaneously in effect for participating Employers and Employees.

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Article I continued

Section 7. **MEMBER OF LOCAL 807.** "Member of Local 807" shall mean a member of Local 807 in accordance with the applicable rules of Local 807.

Section 8. **PENSIONER.** "Pensioner" means a person pensioned under this Plan.

Section 9. **PENSION CREDITS.** "Pension Credits" or "807 Pension Credits" shall mean the quarters or years which are credited toward a pension under this Plan in accordance with the provisions of Sections 1 through 5 of Article III.

Section 10. **THE EFFECTIVE DATE OF RETIREMENT.** Retirement shall be deemed effective under this Plan upon the first day of any calendar month by which day the Employee has fulfilled all of the requirements for a pension hereunder, including written application duly filed and cessation of employment.

Section 11. **CERTAIN OTHER TERMS:** The terms "Related Pension Plan," "Related Pension Credits" and "Combined Pension Credits" are defined in Sections 2 and 3 of Article II-A.

Section 12. **FORMER LOCAL 282 EMPLOYERS AND EMPLOYEES.** Members of Local 282 who were transferred to Local 807 pursuant to the decision of the General Executive Board of the International Brotherhood of Teamsters on or about February 15, 1953, shall be accorded the same benefits, rights and privileges under this Plan, and shall be subject to the same rules and regulations, irrespective of prior employment by employers under contract with Local 282 as members of 807 at the time of transfer.

- (a) The term "Employer" shall be deemed to include an employer who was obligated by his collective bargaining agreement with Building Material Teamsters Local Union No. 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (herein called "Local 282") to contribute to the Local 282 Pension Trust Fund, and whose employees were transferred to Local 807 pursuant to the decision of the General Executive Board of the International Brotherhood of Teamsters on or about February 15, 1953, and has a collective bargaining agreement with Local 807 to contribute to the Pension Fund.
- (b) The term "Employee" shall be deemed to include an employee of an employer as defined in Paragraph (a) hereof.

Section 13. **FEMALES INCLUDED.** The use of a masculine noun or pronoun shall include the feminine wherever the context permits.

ARTICLE II. BENEFITS AND ELIGIBILITY

Section 1. **OUTLINE.** This Pension Plan provides several different types of pensions, depending on the man's age and the years of Pension Credit he has accumulated. An outline of these different types of pensions may be helpful in understanding the provisions which follow.

FIRST there is a **NORMAL PENSION** for a man who has attained age 65 if he has accumulated 25 years of Credit.

Article II continued

SECOND there is a REDUCED PENSION for a man who does not have enough Pension Credits to qualify for the Normal Pension, but who has attained age 65 and has accumulated at least 15 years of Credit. This pension is in a reduced amount based on the man's Pension Credits in relation to what credits he would need for the Normal Pension.

THIRD there is an EARLY RETIREMENT PENSION that is provided for a man who wants to retire between age 55 and 65. For an Early Retirement Pension the amount is reduced to take account of his earlier age of retirement. For an Early Retirement Pension, at least 15 years of Pension Credit are required.

FOURTH there is provision in the form of PRO RATA PENSIONS for safeguarding a man's pension rights if he works part of the time in Covered Employment (under Local 807 contracts) and part of the time in a job which is covered by another Pension Fund set up under the contracts of a Teamster Local and recognized for this purpose by this Plan. In a situation of this kind, the Plan will protect the man's eligibility by taking account of his combined years of employment and it will pay the man a Pro Rata Pension based on what part of his combined years of employment consisted of Covered Employment under this Pension Plan.

FIFTH there is a TWENTY FIVE YEAR PENSION for a man who has accumulated at least 25 years of credit and has attained age 50.

SIXTH there is a THIRTY YEAR PENSION for a man who accumulated 30 or more years of credit regardless of his age.

SEVENTH there is a SOCIAL SECURITY LEVEL INCOME OPTION for a man who retires after age 55 and before age 65.

EIGHTH there is a SIXTY MONTH GUARANTEE under which the monthly benefits to which an employee would have qualified, had he applied for a pension, are paid to his surviving wife or dependent children for sixty months in the event of the employee's death on or after October 1, 1969.

The guarantee also provides for continuing benefits to a surviving spouse or dependent children for the remainder of sixty months if a pensioner dies before receiving sixty months of benefits.

NINTH there is a DISABILITY PENSION provided for a man who has at least 10 years of Pension Credit and who became disabled on or after September 1, 1964 but before he has attained age 65.

FINALLY there is a DEATH BENEFIT which is paid on the death of a pensioner for burial expenses or to his designated beneficiary.

This Section is an outline. The sections which follow give the actual qualifications for each of these types of pension. Article III defines the basis on which men accumulate years of Pension Credit and the basis on which these Credits are maintained or cancelled.

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General Counsel's Exhibit 4

Article II continued

Section 2. NORMAL PENSION. An Employee shall be entitled to retire on a Normal Pension if:

- (a) he has attained age 65, and
- (b) he has accumulated Pension Credits for at least 25 years,
- (c) provided he did not retire before September 1, 1950, as defined in Section 16 of this Article.

Section 3. AMOUNT OF NORMAL PENSION. The Normal Pension shall be \$300* a month.

Section 4. REDUCED PENSION. An Employee shall be entitled to retire on a Reduced Pension if he is not eligible for a Normal Pension but

- (a) he has attained age 65; and
- (b) he has at least 15 years of Pension Credit; and
- (c) provided he did not retire before September 1, 1950, as defined in Section 16 of this Article.

Section 5. AMOUNT OF REDUCED PENSION. The Reduced Pension shall be determined in accordance with the following schedule by the monthly amount which corresponds to the Pension Credits accumulated by the Employee.

TABLE OF REDUCED BENEFIT AMOUNTS*

| Years of pension credit | Amount | Years of pension credit | Amount |
|-------------------------|--------|-------------------------|--------|
| 15 | \$180 | 21 | \$252 |
| 16 | 192 | 22 | 264 |
| 17 | 204 | 23 | 276 |
| 18 | 216 | 24 | 288 |
| 19 | 228 | | |
| 20 | 240 | | |

Section 6. EARLY RETIREMENT PENSION. An Employee shall be entitled to retire on an Early Retirement Pension if

- (a) he has attained age 55; and
- (b) he has at least 15 years' Pension Credits; and
- (c) provided he did not retire before September 1, 1950, as defined in Section 16 of this Article.

Section 7. AMOUNT OF THE EARLY RETIREMENT PENSION. The Early Retirement Pension amount shall be determined as follows:

- (a) The Normal or Reduced Pension amount shall first be determined as if the Employee were then 65 years of age;

*Adopted July 16, 1970 for pensions effective on and after September 1, 1970 for employees who have at least one quarter of pension credit in the three month period ended July 31, 1970 or thereafter.

101a
General Counsel's Exhibit 4

Article II continued

- (b) The amount so determined shall then be reduced by one-half of one percent for each month by which the Employee is younger than 65 on the last day of the last quarter for which he earned Pension Credits.
- (c) The amount so determined, if it is not already a multiple of \$.50, shall be rounded to the next highest multiple of \$.50.

Section 8. TWENTY-FIVE YEAR PENSION. An Employee who has attained age 50 shall be entitled to retire on a Twenty-Five Year Pension if he has accumulated Pension Credit for at least 25 years.

Section 9. AMOUNT OF THE TWENTY-FIVE YEAR PENSION. The Twenty-Five Year Pension shall be \$225* a month.

Section 10. THIRTY YEAR PENSION. An Employee shall be entitled to retire on a thirty year pension effective September 1, 1958 or later if

- (a) he has accumulated Pension Credits for at least 30 years;
- (b) provided he earned at least one day of Pension Credit on or after May 1, 1958.

Section 11. AMOUNT OF THE THIRTY YEAR PENSION. The Thirty Year Pension shall be \$300* a month.

Section 12. SOCIAL SECURITY LEVEL INCOME OPTION. An Employee entitled to a pension after age 55 and before age 65 may elect a Social Security Level Income Option in lieu of the pension otherwise payable to him. If he elects this option he will receive a higher monthly amount from the Fund for each month before the month in which he attains age 65 and a lower monthly amount from the Fund for life thereafter. The general purpose of this Option is to provide an early retirement pensioner with a more or less level income for life, taking account of his likely receipt of the primary Social Security Benefit after he attains age 65. The higher amount payable before attainment of age 65 and the lower amount payable on and after attainment of age 65 shall be determined on the basis of actuarial equivalence. No pension payable after attainment of age 65 shall be less than \$20 per month. Except where this limitation makes it impossible, the amount payable before attainment of age 65 shall be \$100 per month higher than the amount payable after attainment of age 65.

Section 13. SIXTY MONTH GUARANTEE. In the event of the death on or after October 1, 1969 of an Employee who has met the age and service requirements for a Normal, Reduced, Early Retirement, Twenty-Five Year or Thirty Year Pension, but who has not yet applied in accordance with Article IV, Section 2, the monthly benefit to which the Employee would have been entitled, if he had made timely application, shall become payable to his surviving wife and shall continue for 60 months.

If a Pensioner shall die within the 60 month period beginning with the effective

*Adopted July 16, 1970 for pensions effective on and after September 1, 1970 for employees who have at least one quarter of pension credit in the three month period ended July 31, 1970 or thereafter.

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General Counsel's Exhibit 4

Article II continued

date of his Pension, then the benefit to which he was entitled shall become payable to his surviving wife.

If the surviving wife should die before the end of the 60 month period, or if there is no surviving wife at the time of death of the Employee or Pensioner, benefits for the remainder of the 60 month period shall become payable and divided equally among the surviving dependent child or dependent children of the Employee or Pensioner, who are dependent children at the time of the death of the Employee or Pensioner, or the surviving wife, as the case may be. Benefits payable under this provision shall cease on the death of the surviving wife and of the last surviving dependent child or at the end of the 60 month period, whichever shall first occur.

The term dependent child used in this provision shall be defined as a child who is eligible for survivor benefits under the Social Security Act.

If payment of the Social Security Level Income has become effective, payments under this provision shall only be made until the benefits paid to the Pensioner and his surviving wife or surviving dependent child or children equal 60 times the monthly benefit amount of the pensioner as calculated under Article II, Sections 3, 5, 7, 9 or 11 or Article II-A before adjustment to the Level Income Option.

Section 14. DEATH BENEFIT. In the event of the death of a Pensioner, a Death Benefit in an amount not to exceed \$1,000 shall be paid by the Trustees to an undertaker or to a third party who, in the sole judgment of the Trustees is equitably entitled to be reimbursed up to the amount of \$1,000 for expenses incurred in connection with the burial of the Pensioner. The payment of the aforesaid Death Benefit shall be made only upon the presentation to the Trustees of a satisfactory bill or other proof of the burial expenses or where burial expenses have been paid, upon presentation of proof, satisfactory to the Trustees that payment thereof has been made. In no event shall the Trustees be liable to the Pensioner or any beneficiary or any third party for burial expenses; it being expressly understood that the payment of an undertaker or to a third party as aforesaid shall rest solely in the discretion of the Trustees and in no event shall the liability or the funds exceed \$1,000. In the event that no claim is made for burial expenses, Death Benefits shall be paid to the designated beneficiaries of the Pensioner in the order of the beneficiaries named by the Pensioner on forms prescribed by the Trustees. In the event that no beneficiary has been named or if the last named beneficiary has predeceased the Pensioner, no Death Benefit of any kind or nature whatsoever shall be payable to any person claiming by, through or under the Pensioner. In the event that the burial expenses are less than \$1,000 the difference between the burial expenses paid and the sum of \$1,000 shall, in the discretion of the Trustees, be payable to the Pensioner's designated beneficiaries in the order named by the Pensioner on the forms prescribed by the Trustees and if no beneficiary has been named or the last named beneficiary has predeceased the Pensioner, no Death Benefit shall be payable to any party.

The Death Benefit shall be payable in connection with a Pensioner whose death occurs on or after September 1, 1964.

If the Pensioner was receiving a Pro Rata Pension in accordance with Article II-A of this Pension Plan, the full amount of the Death Benefit shall be paid by the Pension Fund under which he was last working in Covered Employment before his retirement.

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Article II continued

The Death Benefit shall be in addition to any benefits which are paid under the provisions of the Sixty Month Guarantee. The Death Benefit shall not be paid, however, if at the time of his death the Pensioner was still eligible for Life Insurance coverage under the eligibility rules of the Welfare Fund of the New York City Trucking Industry — Local 807.

Section 14A. DEATH BENEFIT OPTION. In lieu of the Death Benefit provided in Section 14, an Employee whose effective date of pension is on or after September 1, 1968 may elect at the time of his retirement to insure himself and his dependents for the Medical-Surgical benefits provided by the Welfare Fund of the N.Y.C. Trucking Industry — Local 807 with such insurance to continue until the end of the month immediately preceding the month in which the Pensioner and his spouse each attain age 65. This option must be elected prior to the effective date of pension and once elected this option may not be revoked.

Section 15. DISABILITY PENSION. A Disability Pension shall be granted to an Employee who becomes unable to work in Covered Employment due to a disability incurred before attaining age sixty-five (65) after having accumulated at least ten (10) years of Pension Credit. The Disability Pension shall be effective on or after September 1, 1964, and applies only to disabilities incurred on or after that date. The amount of the Disability Pension shall be the same sum that would otherwise be payable under this Plan to an Employee who had attained age 55 and who had the same number of years of Pension Credit between 15 and 25 years as the applicant for the Disability Pension but in no case shall the amount be less than that which would be payable for 15 years of Pension Credit. Neither the Social Security Option nor the Sixty Month Guarantee, elsewhere provided in this Pension Plan, shall be applicable to Disability Pensions.

Section 16. ACTIVE EMPLOYMENT AFTER SEPTEMBER 1, 1950. This Pension Plan covers only those Employees who were actively at work in Covered Employment on and after September 1, 1950, and pension benefits hereunder are not to be payable to any person who ceased active work in Covered Employment before that date. For this purpose, a person shall be considered as having retired before September 1, 1950 unless he earned Pension Credits based on actual work in Covered Employment for at least one quarter of Pension Credit after September 1, 1950, but before March 1, 1954.

For purposes of determining whether a person retired before September 1, 1950, or not, Related Credits based on actual work in employment for which contributions were made to a Related Pension Plan shall be treated as if they were Pension Credits based on actual work in Covered Employment.

Section 17. NON-DUPLICATING PENSIONS. Nothing contained in this Plan shall be construed as permitting any person to be entitled simultaneously to more than one type of pension under this Plan. If an employee has met the requirements for more than one type of pension he shall be entitled to receive the type of pension for which he is qualified that provides the highest monthly benefit.

Section 18. RETIREMENT DEFINED

- (a) Retirement under this Plan for employees who are age 55 or over on the last day of the last quarter for which they earn Pension Credits shall mean

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complete withdrawal from any employment covered by a collective bargaining agreement of Local 807 or of any other Local Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers or from employment as a salaried employee of the Pension Fund of the New York City Trucking Industry — Local 807.

- (b) Retirement under this Plan for employees who are under age 55 on the last day of the last quarter for which they earn pension credits shall mean complete withdrawal from any employment with any employer who has a collective bargaining agreement with Local 807 or with any other Local Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers or from employment as a salaried employee of the Pension Fund of the New York City Trucking Industry — Local 807 and complete withdrawal from the trucking industry.
- (c) If a Pensioner breaks his retirement by taking employment of the type described in (a) or (b) above and notifies the Trustees by registered mail within fifteen (15) days, he shall not be entitled to benefits for any month of such work and for one additional month.
- (d) If a Pensioner breaks his retirement by taking employment of the type described in (a) or (b) above and does not notify the Trustees as required by (c) above, his pension shall be suspended and he shall be required to appear before the Board of Trustees for a determination of his entitlement.

Section 19. RE-EMPLOYMENT OF AN EARLY RETIREMENT PENSIONER. If an Employee who has retired on pension returns to employment and subsequently retires again, he shall not be entitled to a redetermination of his monthly benefit amount.

Section 20. RETIREMENT BEFORE PENSIONABLE AGE. In no event shall any person be entitled to a pension other than as provided for in Sections 8, 10 and 15 of this Article II, if he ceased earning Pension Credit before he attained age 55.

Section 21. NON-REDUCTION OF BENEFITS. If an Employee has accumulated 25 years of pension credit at any age or has once fulfilled the conditions of eligibility for a pension except that he postponed his retirement or his application for a pension, then he shall not thereafter be disqualified from a pension on the ground of a break in employment (as defined in Section 5 of Article III) nor suffer a reduction in monthly benefit amount through application of the schedule in Section 5 of this Article. However, nothing in this section shall be construed to require payments with respect to any period prior to actual retirement or application.

Any Employee whose pension credits have vested under the terms and conditions of this Plan, and who thereafter is absent from Covered Employment for two years or more, and who thereafter returns to Covered Employment shall not be entitled to any increased level of benefits adopted by the Trustees unless he returns to Covered Employment and earns at least eight quarters of pension credit.

Section 22. VETERANS. Any veteran who is actually receiving, or who has applied for and subsequently receives, or who hereafter applies for and actually receives a pension for non-service connected disability under Title 38, U.S. Code, Chapter 15 shall not be entitled to receive, within any calendar year, benefits under

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Article II continued

this Plan in excess of that amount, Ninety (90%) percent of which when added to other income of the veteran will bring his total income for a calendar year:

- (a) to \$1,400 (if he is unmarried and has no child) or \$2,700 (if he is married or has a child), where the veteran receives the Veteran's Pension under Title 38, U.S. Code, Chapter 15 prior to its amendment by the Veteran's Pension Act of 1959 or
- (b) to \$1,800 (if he is unmarried and has no child) or \$3,000 (if he is married or has a child), where the veteran receives or shall receive the Veteran's Pension under the amendments to Title 38, U.S. Code, Chapter 15 made by the Veterans' Pension Act of 1959.

"Income", "unmarried", "married", and "child" shall have the same meaning and tenor for the purposes of this section as they have in determining the eligibility of a veteran for a Disability Pension under Title 38, U.S. Code, Chapter 15.

The veteran shall be obligated to notify the Trustees in writing if and when there is any change in his status or income which would involve a reduction in the benefit amount payable to him under the terms of this section. If a veteran fails to give the Trustees notice of such a change, he shall lose all right to benefits for the period of over-payment.

ARTICLE II-A. PRO RATA PENSIONS

Section 1. PURPOSE. Pro Rata Pensions are provided under this Plan for men who would otherwise be ineligible because their years of employment have been divided between Covered Employment and employment covered by another pension plan or whose pensions would otherwise be in less than the full amount because of such division of employment.

Section 2. RELATED PLANS. By resolution duly adopted, the Trustees may recognize another pension plan as a Related Plan.

Section 3. RELATED CREDITS. Pension (service) credits accumulated and maintained by a man under a Related Plan shall be recognized under this Plan as Related Pension Credits. The total of a man's Related Pension Credits and the Pension Credits which he has accumulated and maintained directly under this plan (referred to in this Article as 807 Pension Credits) shall be known as his Combined Pension Credits. For purposes of this Plan, the term Related Pension Credits does not include service under the coverage of a Plan which is not recognized by the Trustees of the Plan as a Related Plan.

Section 4. ELIGIBILITY

- (a) An Employee shall be eligible for a Pro Rata Pension under this Plan if he meets all of the following requirements:
 - (i) he would be eligible for a Normal, Reduced, Early Retirement, Disability, Twenty Five Year or Thirty Year Pension under this Plan were his Combined Pension Credits treated as 807 Pension Credits;

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Article II-A continued

- (ii) he has credit for at least eight quarters of 807 Pension Credits based on actual employment after August 31, 1952, except that no more than two such quarters shall be required if he has credit for at least six quarters based on actual employment under the coverage of a Related Fund or Funds after August 31, 1952;
 - (iii) he is found entitled to a Pro Rata Pension from the Pension Fund under which he is last covered before his retirement. The Pension Fund under which an Employee is "last covered before his retirement" shall be deemed to be the following:
 - (A) the Pension Fund associated with the local union of which he is a member at the time of, or immediately prior to, his retirement, or, if he is not then a member of any such local union, then
 - (B) the Pension Fund under the coverage of which he was principally employed during the period of 36 consecutive calendar months immediately preceding his retirement.
 - (iv) a pension is not payable to him from a Related Pension Plan independently of its provisions for Pro Rata Pensions (or its equivalent provisions, regardless of name). An Employee who is otherwise eligible for such a non-Pro-Rata Pension may fulfill this requirement by electing not to apply for, or by waiving, such other pension.
- (b) The rule with respect to breaks in service as set forth in Section 5 of Article III shall be applied to determine whether prior Combined Pension Credit shall be cancelled, but Related Pension Credits shall be considered in determining whether a break has occurred.
- (c) If an Employee is eligible for more than one type of pension under this Plan, he shall be entitled to elect the type of pension he is to receive.

Section 5. BENEFIT AMOUNT

- (a) The amount of the Pro Rata Pension shall be determined as follows:
- (i) There shall first be determined the amount of the pension to which the Employee would be entitled under this Plan if his Combined Pension Credits had all been 807 Pension Credits. This shall be the amount before rounding-up.

If the Employee retired before September 1, 1956, that pension amount shall be determined in accordance with the \$50 Normal Pension level as provided under the Plan prior to its amendment on August 9, 1956, notwithstanding the fact that the Employee's Pro Rata Pension may become effective after September 1, 1956. For purposes of this subsection, an Employee shall be deemed to have retired before September 1, 1956 if he failed to earn, through actual work, at least four quarters of credit after August 31, 1955, including at least one quarter after September 1, 1956.
 - (ii) A percentage of that amount shall then be taken based on the percentage of the man's employment since September 1, 1952 for which contributions were made to this Pension Fund. More specifically the amount determined under subsection (i) above shall be multiplied by

Article II-A continued

the following ratio: A divided by the sum of A plus B, where

A is the number of quarters of 807 Pension Credit earned by the Employee on the basis of actual Covered Employment since September 1, 1952 for which an Employer has contributed to this Pension Fund, and

B is the total quarters of Related Pension Credit earned by the Employee on the basis of actual employment of the Employee since September 1, 1952 for which an employer has contributed to the Related Pension Plan or Plans.

(iii) The resulting benefit amount shall be rounded off to the next higher multiple of fifty cents.

(b) For purposes of this Section, any time prior to the most recent period establishing 25 years of Combined Pension Credits shall be disregarded.

(c) "Actual employment since September 1, 1952 for which an Employer has contributed" to this or to a Related Pension Fund shall include:

(i) Periods of employment for which the employer was obligated by his collective bargaining agreement so to contribute, even though such contributions were not actually paid;

(ii) Periods of employment after September 1, 1952 but before the employer became obligated to contribute to the Pension Fund, provided the employment was in a job classification subsequently covered by an obligation on the employer so to contribute; but only to the extent that the provisions of such Pension Plan grant pension credit for such prior periods;

(iii) with respect to an individual company pension plan which is recognized as a Related Plan, periods of employment (after September 1, 1952) following establishment of that Plan insofar as that job classification is concerned.

"Actual employment since September 1, 1952 for which an Employer has contributed" to this Pension Fund shall not, however, include any employment, the contributions for which have been transferred to another pension fund.

Section 6. NON-DUPLICATION OF CREDITS

(a) In determining the benefit amount under paragraph (a) (i) of Section 5, an Employee shall not receive more in Combined Pension Credit for any given quarter or year than he would receive in pension credit if all of his relevant employment were under the coverage of that plan (whether it be this Plan or one of the Related Plans under which he has worked) which would grant him the greatest amount of credit for that particular period. However, for purposes of paragraph (a) (ii) of Section 5, "A" shall be the number of the Employee's 807 Pension Credits determined independently of his Related Pension Credits and "B" shall be the number of the Employee's Related Pension Credits determined independently of his 807 Pension Credits notwithstanding duplicate credits resulting from split employment within particular quarter(s) or year(s).

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- (b) If in a particular Pension Quarter an Employee has not had a sufficient number of days of Covered Employment to be credited with that quarter as 807 Pension Credit, but he would be so credited if his days of employment under the coverage of a Related Pension Plan were also counted as if they were days of Covered Employment, he shall be credited with that quarter as a quarter of Related Pension Credit.

Section 7. PAYMENT.

- (a) Payment of a Pro Rata Pension shall be subject to all of the conditions applicable to the other types of pensions under this Plan, including, without limitation, the requirements for retirement as defined herein.
- (b) In order to permit a Pensioner receiving a Pro Rata Pension to receive his aggregate benefits in one monthly pension check, instead of several, the Trustees may authorize the trustees or administrator of a Related Plan or a bank, trust company, or insurance company to make payment of a Pro Rata Pension as agent for the Trustees of this Plan. The Trustees of this Plan are authorized to act similarly as agent for the Trustees, corporate trustee, or administrator of a Related Plan in making payment of pensions for which the Related Plan is obligated to Pensioners under this Plan.
- (c) Payments under this Article shall not be made for any month prior to September 1957.

Section 8. HONORING OF PENSION CREDITS. The Trustees shall credit quarters of Related Pension Credit on the basis on which those quarters of credit have been credited under the Related Plan under which the relevant employment occurred.

Section 9. EFFECTIVE DATE. This Article shall be effective as of August 1, 1952.

ARTICLE III. PENSION CREDITS

Section 1. PENSION CREDITS GENERALLY. Entitlement to a pension under this Plan is determined in part on the accumulation of Pension Credits. Pension Credits are granted on the basis of employment covered by the Pension Fund. Credits are granted in quarter-year units. A Pension Quarter is defined as any period of three consecutive months starting August 1st, November 1st, February 1st or May 1st. A year of Pension Credits consists of any four quarters of Pension Credit.

Pension Credits shall be granted only as set forth in this Article.

There is one basis for securing Pension Credits for the period *before September 1, 1950* and another basis for accumulating Pension Credits for the period *on and after September 1, 1950*. For the earlier period, membership in Local 807 is important; for the latter period it is purely a question of a certain minimum amount of work in Covered Employment.

Section 2. PAST SERVICE.

- (a) With respect to the period prior to September 1, 1950, an Employee shall be credited with a quarter-year of Pension Credit for each Pension Quarter in which he worked for at least 36 days in Covered Employment. For this

Article III continued

purpose, Covered Employment shall include such employment prior to the time that contributions to the Pension Fund began, but only for those periods of time when the employment was covered by a collective bargaining agreement with Local 807.

- (b) It is recognized that it would be difficult for many, if not most of the Employees to establish their periods of Covered Employment prior to September 1, 1950. Consequently, anyone who was a member of Local 807 in the period September 1, 1950 through February 28, 1954 and who earned at least one quarter of Pension Credit by virtue of actual work in Covered Employment within that period may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 807 prior to September 1, 1950. For this purpose, a Pension Quarter shall be credited if the Employee was a member for any part of the quarter. An Employee who was a member in any part of 1937 shall be given credit with respect to 1937 as if he had been a member from March 1, 1937.
- (c) Periods of employment, even before coverage by a Local 807 contract, by an employer which participated in the Pension Fund on September 1, 1950, shall also be credited, provided that it was employment in a category of work (such as a driver, helper, etc.) which is covered by Local 807 agreements.

Section 3. FUTURE SERVICE. For the period on and after September 1, 1950, an Employee shall be credited with service at the rate of one quarter-year credit for each Pension Quarter in which he worked for 25 days or more in Covered Employment. However, for the period September 1, 1950 to November 30, 1954 this requirement shall be 36 or more days in Covered Employment.

Section 4. NON-WORK PERIODS CREDITED. An Employee having prior credited service who fails to work in Covered Employment in a Pension Quarter for at least the number of days specified in Section 3 of this Article shall receive Pension Credit for that quarter if such failure was due to absence from work because of

- (a) disability up to the maximum period compensated by the weekly accident and sickness benefit plan provided by the Welfare Fund of the New York City Trucking Industry — Local 807, or by any other welfare plan recognized for this purpose by the Trustees; or
- (b) disability arising from Covered Employment for a period not exceeding twenty-four months compensated under the Workmen's Compensation Law; or
- (c) military service of the United States in time of war or emergency, or pursuant to a national conscription law, provided the Employee makes himself available for Covered Employment within 90 days after release from active duty or 90 days after recovery from a disability continuing after his release from active duty, but excluding periods of voluntary re-enlistment not effected during national emergency or time of war.

Section 5. BREAKS IN SERVICE. If there is a break in the continuity of an Employee's Pension Credits, he shall lose credit for his service prior to the break.

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- (a) A break shall be deemed to have occurred (whether before or after September 1, 1950) if an Employee lacks credit for twelve consecutive Pension Quarters.
- (b) However, the following quarters shall not be counted toward the twelve consecutive calendar quarters constituting a break in the continuity of an Employee's Pension Credits.
 - (i) Those quarters in which the lack of creditable employment was due to disability, but not more than a total of 12 such quarters. Disability shall mean total inability because of injury or disease to engage in creditable employment, whether or not the injury or disease is compensable under the Workmen's Compensation Law. The Employee shall bear the burden of proving such disability to the satisfaction of the Board of Trustees.
 - (ii) Those Pension Quarters in which Related Pension Credits were earned by virtue of actual work in employment covered by a Related Pension Plan.

Section 6. TERMINATED EMPLOYERS. If an Employer ceases to comply with the definition of Employer as set forth in Article I, Section 4, or if an Employer is declared by the Trustees to have ceased participation in the Fund because of failure of the Employer to make contributions to the Pension Fund as required by the Employer's collective bargaining agreement with Local 807, it shall be deemed a termination of participation by that Employer and the following shall apply:

- (a) Employment by that Employer for the period following termination shall not be credited as Covered Employment; and
- (b) employment by that Employer during the period when the Employer failed to make contributions to the Pension Fund as required by his collective bargaining agreement with Local 807 shall not be credited as Covered Employment, except as the Trustees may permit by rules applicable to all like situations; and
- (c) other prior employment by that Employer shall still be credited under this Plan (if otherwise creditable) except if a break in employment as defined in Article III, Section 5 is incurred; and
- (d) there shall be no refund of contributions nor reversion of assets to a terminated employer, directly or indirectly, nor to any Pension Trust, Annuity Contract or Pension Plan of a terminated employer.

Section 7. NEWLY PARTICIPATING EMPLOYERS. If an employer first becomes obligated to contribute to the Pension Fund after November 30, 1955, service with such employer prior to the first date of contributions shall be credited on the same basis and to the same extent as other creditable employment, but not until the employer has been a contributing employer for at least two years. With respect to employers other than newly organized employers, acceptance is to be dependent upon an actuarial review and approval of the Trustees.

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ARTICLE IV. BENEFIT PAYMENT

Section 1. BENEFIT ENTITLEMENT. An eligible Employee who makes application in accordance with these rules shall be entitled, upon retirement, to receive the monthly benefit provided for the remainder of his life, subject to all of the provisions of this Pension Plan.

Section 2. ADVANCE APPLICATION REQUIRED. An Employee shall file his application at least one month in advance of his retirement under this Pension Plan and no pension shall be effective earlier than the first of the month following the date on which such application is filed. An employee who fails to apply for his pension benefit at the proper time as set forth in this Article but who files belatedly and whose late filing is excused by the Trustees in its sole and uncontrolled discretion shall under no circumstances be entitled to retroactive pension benefits for more than 2 years regardless of the benefit that he would have received if he had made timely application as set forth in this Article.

Section 2A. BENEFIT DETERMINATIONS. The amount of pension benefit to which an Employee is entitled hereunder shall be determined by the date on which an Employee ceased to be employed in Covered Employment as defined in this Plan. Anything to the contrary notwithstanding an employee shall be entitled to retire at the highest benefit level after he earns one quarter of pension credit subsequent to the effective date of an increase in benefit level.

Section 3. APPLICATION FORMS. Applications shall be made in writing in the form and manner prescribed by the Board of Trustees.

Section 4. INFORMATION REQUIRED. Each and every Employer, Employee and Pensioner shall furnish to the Board of Trustees any information or proof requested by it and reasonably required to administer this Pension Plan. Failure on the part of any Employee or Pensioner to comply with such request promptly and in good faith shall be sufficient grounds for denying or discontinuing benefits to such person.

Section 5. STANDARDS OF PROOF. The Trustees shall be the sole judges of the standard of proof required in any case. In the application and interpretation of this Pension Plan, the decisions of the Board of Trustees shall be final and binding on all parties, including Employees, Employers, Union, and Pensioners. The Trustees may at any time, by resolution duly adopted, appoint a committee for the hearing and consideration of any matters specified by the Trustees, and the decision of such committee shall be binding on all parties subject only to disapproval or modification by the Board of Trustees.

Section 6. FIRST AND LAST PAYMENTS. The first benefit shall be payable for the calendar month immediately following entitlement to benefits. The last monthly benefit shall be payable for the month in which the Pensioner dies.

Section 7. COMMENCEMENT OF BENEFITS. This Plan shall become effective immediately. However, no benefit shall be payable for any period prior to August 1, 1954.

Section 8. NON-DUPLICATION WITH ACCIDENT AND SICKNESS BENEFITS. The amount of weekly accident and sickness benefits payable for any month to a Pen-

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sioner under the Welfare Fund of the NYC Trucking Industry—Local 807 shall be deducted from the Pension otherwise payable to the Pensioner for such month.

Section 9. INCOMPETENCE OF PENSIONER. In the event it is determined that a Pensioner is unable to care for his affairs because of illness, accident or incapacity, either mental or physical, any payment due may, unless claim shall have been made therefor by a legally appointed guardian, committee, or other legal representative, be paid to the spouse of such other object of natural bounty of the Pensioner as the Board of Trustees shall determine in its sole discretion.

Section 10. NON-ASSIGNMENT OF BENEFITS. To the end of making it impossible for Employees or Pensioners covered by this Pension Plan improvidently to imperil the provisions made for their support and welfare by directly anticipating, pledging, or disposing of their retirement payments hereunder, it is hereby expressly stipulated that no Employee or Pensioner hereunder shall have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any refunds or retirement benefits hereunder, and that such payments shall not in any way be subject to any legal process to levy execution upon or attachment or garnishment proceedings against the same for the payment of any claim against any Employee or Pensioner nor shall such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise and any such assignment, etc., shall be void and of no effect whatsoever.

Section 11. DESIGNATION OF BENEFICIARY. An Employee or Pensioner may designate a beneficiary to receive any pension benefits accrued but unpaid at the death of the Employee or Pensioner. Such a designation of Beneficiary shall be valid if made in writing on forms provided by the Board of Trustees and filed with the Board of Trustees. In the event that an Employee or Pensioner does not so designate a Beneficiary, the Beneficiary whom the Employee has last named for his life insurance provided by the Welfare Fund of the New York City Trucking Industry—Local 807 shall be deemed his Beneficiary for all purposes of this Pension Plan. If a Beneficiary has not been named by either of the foregoing procedures, the above-mentioned payments shall be made to the Employee's or Pensioner's spouse or other object of natural bounty of the Employee or Pensioner as the Board of Trustees shall determine as its sole discretion.

ARTICLE V. AMENDMENT AND TERMINATION

Section 1. RIGHT TO AMEND. Consistent with the provisions of the Agreement and Declaration of Trust, dated December 1, 1950, as amended from time to time, these Rules and Regulations may be amended, modified, and varied in any respect whatever, including, but not limited to, benefits, eligibility requirements, qualifications, effective dates and the like, from time to time by the Trustees. Each such amendment shall be duly executed in writing by the Trustees and filed by the Trustees as part of the records and minutes of the Trustees. The Trustees shall have full power in their sole discretion to fix the effective date of any amendment.

Section 2. TERMINATION. In the event of termination of the Plan, an actuarial study will be made to determine an equitable utilization of the trust estate in accordance with the purposes of the Pension Fund. Any trust utilization will be submitted to the Bureau of Internal Revenue for its approval.

Article V continued

Section 3. SEPARABILITY. The regulations herein provided, as well as each and every article thereto, shall be deemed separable, so that the invalidity of any ruling or article hereof shall not affect the validity of the remaining rules and articles.

Section 4. NON-REVERSION. It is expressly understood that in no event shall any of the corpus or assets of the Pension Fund revert to the employers or be subject to any claims of any kind or nature by the employers.

ARTICLE VI. FORMER MEMBERS OF LOCAL 282

The provisions of this Article are only applicable to those persons who were transferred from Local 282 to Local 807 pursuant to the decision of the General Executive Board of the International Brotherhood of Teamsters on or about February 15, 1953. Members of Local 807, until September 1, 1956, had the right to withdraw, subject to certain rules and regulations, contributions made by them to the Pension Fund. However, the right of members of Local 282 who were transferred to Local 807, to withdraw their contributions which they had made to the Local 282—New York City Trucking Industry Pension Trust Fund, has been uncertain from April 1, 1953. Accordingly, this Article has been adopted to protect their right and interests in their contributions which have been transferred to the Pension Fund from the Local 282—New York City Trucking Industry Pension Trust Fund.

Section 1. REFUND ON DEATH OF A PENSIONER. In the event that a Pensioner dies before he had received in pension benefits an aggregate equal to the total of the contributions made by him into the Pension Fund plus interest to November 30, 1954, at the rate of 2% per annum, compounded annually, then the Pensioner's beneficiary shall be paid the difference between the two amounts.

Section 2. REFUND ON DEATH OF THE EMPLOYEE. Upon the death of an Employee, an amount equal to the contributions, if any, made by the Employee to the Pension Fund plus interest to November 30, 1954, at the rate of 2%, compounded annually (and less any pension payments previously made to the Employee) shall be paid to his beneficiary, provided the beneficiary makes written application therefor to the Board of Trustees within six years after the death of the Employee.

Section 3. REFUND ON WITHDRAWAL FROM INDUSTRY.

(a) A person who ceases to be employed in Covered Employment shall be entitled to a refund of all contributions made by him to the Pension Fund, plus interest thereon to November 30, 1954, at the rate of 2%, if:

- (i) he makes written application to the Board of Trustees for such a refund within a period not to exceed six years from the date he was last employed in Covered Employment with the exception that the Board of Trustees, in its sole and uncontrolled discretion, may excuse failure to apply within this time limit if it finds the Employee had reasonable grounds for believing that he was still covered by the Pension Plan; and
- (ii) he does no work in Covered Employment within the six consecutive calendar months immediately following such application (or if the per-

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son last worked in Covered Employment prior to January 1, 1952, he performs no work in Covered Employment within the six consecutive calendar months immediately following such date of last employment).

- (b) An Employee who withdraws from this Pension Plan in accordance with this Section shall lose all credit for his service prior to his withdrawal.
- (c) However, if the Employee subsequently returns to Covered Employment and has not incurred a break in service, as defined in Section 5 of Article III, then he may be restored credit for his prior service by refunding to the Pension Fund the contributions (together with interest thereon) which he had previously withdrawn with interest at the rate of 2% compounded annually, to the date when it is refunded to him.
- (d) Should the Board of Trustees, in its sole discretion, find, at any time, that the number of refunds under this Section is so large as to affect, adversely, the Pension Fund or its investment yield, it may make payment of each such refunds in a series of partial payments over a period of time not exceeding 24 consecutive months.

Section 4. DESIGNATION OR BENEFICIARY. An employee or pensioner may designate a beneficiary to receive the benefits provided under this Article, accrued, but unpaid, at the death of the employee or pensioner. Such a designation of beneficiary shall be valid if made in writing on forms provided by the Board of Trustees and filed with the Board of Trustees. In the event that an employee or pensioner does not so designate a beneficiary, the beneficiary whom the employee has last named for his life insurance provided by the Welfare Fund of the New York City Trucking Industry—Local 807, shall be deemed his beneficiary for all purposes of this Pension Plan. If a beneficiary has not been named by either of the foregoing procedures, the above-mentioned payments shall be made to the employee's or pensioner's spouse or other object of natural bounty of the employee or pensioner as the Board of Trustees shall determine at its sole discretion.

Section 5. In no event shall any of the contributions made by former Local 282 members to the Pension Fund be returned to any employer.

**TEAMSTER PENSION FUNDS SIGNATORY TO THE
NATIONAL RECIPROCAL AGREEMENT**

- 1) Connecticut Baking—Milk Industry Teamsters Union Pension Fund (LU 145, 677, 443, 191)
- 2) Trucking Employees of North Jersey Welfare Fund, Inc. Pension Fund, Jersey City, New Jersey (IBT Locals 560, 617, 641)
- 3) Warehouse Local #570 Pension Fund (Baltimore, Maryland)
- 4) Local Union #469 Pension Trust Fund (Perth Amboy, New Jersey)
- 5) Pension Fund Local #445 (Yonkers, New York)
- 6) Road Carriers Local #707 Pension Fund (New York City)
- 7) New England Teamsters and Trucking Industry Pension Fund (Mass., Conn., R.I., Me., N.H., Vt.) (28 Local Unions)
- 8) Bakery Drivers Local #550 and Industry Pension Plan
- 9) Freight Drivers and Helpers Local Union #557 Pension Fund (Baltimore, Maryland)
- 10) Bakery Drivers Local #485 Pension Fund (Pittsburgh, Pennsylvania)
- 11) Teamsters' Joint Council #83 of Virginia Pension Fund (Local Unions 22, 29, 171, 322, 539, 592, 822)
- 12) Teamsters Construction Industry and Miscellaneous Pension Fund (Pittsburgh, Pennsylvania) (Local Unions 249, 341, 872, 30, 397, 453, 538, 564, 491, 963, 110, 585, 261)
- 13) Local 295 Employer Group Pension Trust Fund (N.Y.C.)
- 14) Warehouse Employee's Union Local 169 and Employers Joint Pension Fund (Also, Locals 676 and 384)
- 15) Teamsters Local Union #211 Pension Fund (Pittsburgh, Pennsylvania)
- 16) Cumberland, Maryland, Area Teamsters Pension Fund
- 17) Hagerstown Motor Carriers and Teamsters Pension Plan (Local 992, (Hagers-town, Maryland)
- 18) Teamsters Local 660 Pension Fund (Jersey City, N. w Jersey)
- 19) Central Pennsylvania Teamsters Pension Fund (Local Unions 229, 312, 401, 429, 430, 764, 765, 771, 773, 776) (Reading, Pennsylvania)
- 20) Warehouse Employers Pension Fund (Local Union 544) (Minneapolis, Minn.)
- 21) Teamsters Local Union 491 and Industry Pension Fund (Uniontown, Pa.)
- 22) Employer-Teamsters Joint Council #84 Pension Fund (Local Unions 175, 505, 789) (Charleston, West Virginia)
- 23) Western Pennsylvania Teamsters and Employers Pension Fund. (Local Unions 30, 72, 110, 205, 211, 249, 250, 261, 273, 397, 453, 538, 564, 585, 635, 636, 872, 926, 944, 963) (Pittsburgh, Pennsylvania)
- 24) New York Central Teamsters Pension Fund (Local Unions 294, 295, 449, 693, 917) New York, New York

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- 25) Local 364 Sales Drivers and Industry Pension Fund—South Bend, Indiana
- 26) Teamsters Allied Pension Fund of Maryland (Local Union 311) Baltimore, Maryland
- 27) Local Union 710 Pension Fund—Chicago, Illinois
- 28) Local 852 General Warehousemen's Union Pension Fund (New York, New York)
- 29) New York State Teamsters Conference Pension and Retirement Fund (Local Unions 65, 118, 182, 232, 294, 317, 375, 398, 449, 506, 529, 648, 649, 687, 693) Utica, New York
- 30) Central States, Southeast and Southwest Areas Pension Plan
- 31) Teamsters Pension Trust Fund of Philadelphia and Vicinity (Local Unions 107, 326, 312, 384, 331, 470, 676, 929, 513, 500, 596, 628, 161)
- 32) Teamsters Local 536 Pension Fund (Wethersfield, Conn.)
- 33) New England Teamsters and Baking Industry Pension Fund (Local Unions 42, 64, 170, 340, 404, 493, 494, 559, 653, 686) Methuen, Mass.
- 34) Bakery Drivers Local #802 Pension Fund (Long Island City, N.Y.)
- 35) Dairy Employees Local #316 Pension Fund (Syracuse, New York)
- 36) Upstate New York Bakery Drivers and Industry Pension Fund (Local Unions 65, 316, 529, 669, 687, 791 and Engineers Locals 71-71A) Syracuse, New York
- 37) United Wire, Metal and Machine Pension Fund (Local Union 810) New York City, New York
- 38) Teamsters Local 876 Pension Fund (Salisbury, Maryland)
- 39) Teamsters Local 277 Pension Fund (New York City, New York)
- 40) Bakery Drivers and Salesmen Local #194 and Industry Pension Fund (Union, New Jersey)
- 41) Pension Trust Fund, Local Union #27 (New York City, New York)
- 42) Teamsters Local Union 210 Pension Fund (New York City, New York)
- 43) Local 805 Pension and Retirement Fund (New York City, New York)

APPENDIX A

Section 1. PURPOSE. Partial Pensions are provided under this Plan for employees who would otherwise lack sufficient service credit to be eligible for any pension because their years of employment were divided between different pension plans or, if eligible, whose pensions would be less than the full amount because of such division of employment.

Section 2. RELATED PLANS. By resolution duly adopted, the Trustees recognize one or more other pension plans, which have executed a Reciprocal Agreement to which this Plan is a party, as a Related Plan.

Section 3. RELATED SERVICE CREDITS. Service credits accumulated and maintained by an employee under a Related Plan shall be recognized under this Plan as Related Service Credits. The Trustees shall compute Related Service Credits on the basis on which that credit has been earned and credited under the Related Plan and certified by the Related Plan to this Plan.

Section 4. COMBINED SERVICE CREDIT. The total of an employee's service credit under this Plan and Related Service Credit together comprise the employee's Combined Service Credit. Not more than one year of Combined Service Credit shall be counted in any calendar year.

Section 5. ELIGIBILITY. An employee shall be eligible for a Partial Pension under this Plan if he satisfies all of the following requirements:

- (a) He would be eligible for any type of pension under this Plan (other than a Partial Pension) if his Combined Service Credit were treated as service credit under this Plan; and
- (b) In addition to any other requirements necessary to be eligible under (a), he has, under this Plan, at least two years of service credit based on actual employment after his Effective Date of coverage; and
- (c) He is found to be (1) eligible for a partial pension from a Related Plan and (2) eligible for a partial pension from the Terminal Plan. The Terminal Plan shall be deemed to be the Plan associated with the local union which represents the employee at the time of, or immediately prior to, his retirement. If at that time the employee was not represented by any one such local union, then the Terminal Plan is the one to which the bulk of contributions were paid on behalf of the employee in the 36 consecutive calendar months immediately preceding his retirement; and
- (d) A pension is not payable to him from a Related Plan independently of its provisions for a Partial Pension. However, an employee who is entitled to a pension other than a Partial Pension from this Plan or a Related Plan may elect to waive the other pension and qualify for the Partial Pension.

Section 6. BREAKS IN SERVICE. In applying the rules of this Plan with respect to cancellation of service credit, any period in which an employee has earned Related Service Credit shall not be counted in determining whether there has been a period of no covered employment sufficient to constitute a break in service. Employment not covered by a Related Plan or Terminal Plan for less than five years shall not constitute a break in service.

Section 7. ELECTION OF PENSIONS. If an employee is eligible for more than one type of pension under this Plan, he shall be entitled to elect the type of pension he is to receive.

Section 8. PARTIAL PENSION AMOUNT. The amount of the Partial Pension shall be determined as follows:

- (a) The amount of pension to which the employee would be entitled under this Plan taking into account his Combined Service Credit shall be determined, then
- (b) The amount of service credit earned with this Plan since January 1, 1955, shall be divided by the total amount of Combined Service Credit earned by the employer since January 1, 1955, then
- (c) The fraction so determined in (b) shall be multiplied by the pension amount determined in (a) and the result shall be the Partial Pension amount payable by this Plan.

Section 9. PAYMENT OF PARTIAL PENSIONS. The payment of a Partial Pension shall be subject to all of the conditions contained in this Plan applicable to other types of pensions including, but not limited to, retirement as herein defined and timely application. Partial Pension payments subject to this Article shall be limited to monthly pension payments to a pensioner or to monthly payments or death benefits to the survivor of a pensioner.

Section 10. EFFECTIVE DATE. This Article and the payment of partial pensions hereunder, shall be effective on October 20, 1970.

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PENSION FUND OF THE NEW YORK CITY TRUCKING INDUSTRY
LOCAL 807

Amendments to Rules and Regulations

Adopted February 28, 1972; Effective February 28, 1972.

Article III, Section 1 and Section 2 are amended to read:

Section 1. PENSION CREDITS GENERALLY. Entitlement to a pension under this Plan is determined in part on the accumulation of Pension Credits. Pension Credits are granted on the basis of employment covered by the Pension Fund. Credits are granted in quarter-year units. A Pension Quarter is defined as any period of three consecutive months starting August 1st, November 1st, February 1st or May 1st. A year of Pension Credits consists of any four quarters of Pension Credit.

Pension Credits shall be granted only as set forth in this Article.

There are two bases for securing Pension Credits for the period before September 1, 1950 and another basis for accumulating Pension Credits for the period on and after September 1, 1950. For the latter period, it is purely a question of a certain minimum amount of work in Covered Employment.

Section 2. PAST SERVICE.

- (a) It is recognized that it would be difficult for many, if not most, of the Employees to establish their periods of Covered Employment prior to January 1, 1937. Consequently, anyone who was a member of Local 807 prior to the period commencing January 1, 1937 may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 807 during this period. For this purpose, a Pension Quarter shall be credited if the Employee was a member for any part of the quarter. Pension credit shall also be granted for any period of time that an employee can prove that he worked in covered employment through employer records.

- (b) With respect to the period January 1, 1937 through August 31, 1950, an Employee shall be credited with a quarter-year of Pension Credit for each Pension Quarter in which he worked for at least 36 days in Covered Employment. For this purpose, Covered Employment shall include such employment prior to the time that contributions to the Pension Fund began, but only for those periods of time when the employment was covered by a collective bargaining agreement with Local 807.

Periods of employment, even before coverage by a Local 807 contract, by an employer which participated in the Pension Fund on September 1, 1950, shall also be credited, provided that it was employment in a category of work (such as a driver, helper, etc.) which is covered by Local 807 agreements.

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AGREEMENT AND DECLARATION OF TRUST made and entered into the 1st day of December, 1950, in the City, County and State of New York, by and between TRUCK DRIVERS LOCAL UNION No. 807, I. B. T. C. W. & H., A. F. of L., presently having its headquarters at 325 Spring Street, in the Borough of Manhattan, City and State of New York (hereinafter called the "Union"), THE MOTOR CARRIER ASSOCIATION OF NEW YORK, INC., a membership corporation organized and existing under the laws of the State of New York with its principal office at 23 East 26th Street, Borough of Manhattan, City and State of New York (hereinafter called the "Carrier Association"), THE NEW YORK STATE MOTOR TRUCK ASSOCIATION, INC., a membership corporation organized and existing under the laws of the State of New York, with its principal office at 30 Vesey Street, Borough of Manhattan, City and State of New York (hereinafter called the "Truck Association"), and various employers having collective bargaining agreements with the Union and doing business in and about the City of New York, who have adopted this Agreement and Declaration of Trust, as hereinbelow set forth (hereinafter called the "Employers"), and JOHN E. STRONG, THOMAS L. HICKEY and DAVID W. FRENCHETTE (who, with their successors designated in the manner hereinafter provided, are herein called the "Union Trustees"), and JOS. M. ADELIZZI, ARTHUR M. BLUESTINE and CLARENCE E. GALSTON (who, with their successors designated in the manner hereinafter provided, are herein called the "Employer Trustees"), the Union Trustees and the Employer Trustees being hereinafter collectively called the "Trustees".

WITNESSETH:

WHEREAS, the Union, the said Associations and the Employers have heretofore executed collective bargaining agreements with the Union; and

WHEREAS, said collective bargaining agreements, copies of which are annexed hereto and made a part hereof, provide, among other things, for the establishment of a pension fund and prescribe the contributions or payments to be made by the Employers and by such of the Employers' employees as are represented by the Union and covered by said collective bargaining agreements; and

WHEREAS, the parties desire to establish said pension fund as a trust fund to be known as the Pension Fund of the N Y C Trucking Industry-Local 807 (hereinafter called the "Pension Fund"), to designate Trustees to receive, hold and administer the same and to define the powers, duties and responsibilities of the Trustees,

Now, THEREFORE, in consideration of the mutual covenants of the parties, and in order to create and establish said trust fund, it is hereby mutually declared, understood and agreed as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.* The term EMPLOYER as used herein shall mean each employer who has presently in force or who hereafter executes a collective bargaining agreement with the Union providing for such Employer's participation in the Pension Fund and who has adopted this Agreement and Declaration of Trust (hereinafter called the "Trust Agreement") in the manner herein provided. For the purposes of this Agreement, Truck Drivers and Chauffeurs Union, Local 807 shall be deemed to be an Employer within this definition.

SECTION 2.* The term EMPLOYEES as used herein shall mean all employees covered by a collective bargaining agreement between an Employer and the Union providing for such Employer's participation in the Pension Fund, and shall be deemed to include

*As amended October 1, 1952.

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any employees who may leave the employ of one Employer and enter the employ of another Employer as herein defined. For the purposes of this Agreement, Truck Drivers and Chauffeurs Union, Local 807 shall be deemed to be an Employer within this definition.

SECTION 3. The term PENSION FUND as used herein shall mean all contributions to the trust fund created hereunder received by the Trustees under said collective bargaining agreements and any additional contributions thereto that may hereafter be agreed upon by the parties under collective bargaining agreements, or any modification, amendment, revision or extension thereof, together with all income, increments, earnings and/or profits therefrom, and all other funds (as hereindefined) received by the Trustees for the uses, purposes and trusts set forth in this Trust Agreement.

SECTION 4. The term PENSION TRUST as used herein shall mean the Pension Fund as held hereunder by the Trustees; and said term, from time to time, shall be used interchangeably with the terms "Pension Fund" and "Trust Fund."

SECTION 5. The term FUND or FUNDS as used herein shall mean (1) cash, (2) credits, (3) stocks either common (with or without voting power) or preferred (with or without present or future voting rights in the event of the happening of a preference condition), (4) bonds, (5) notes, (6) other property or securities or interests in property (real, personal or mixed) whether or not such funds meet the requirements of legal investments for trust funds in any state or jurisdiction and (7) any life insurance or annuity contract or contracts issued by a life insurance company held in or forming a part of the Pension Fund.

SECTION 6. The term TRUSTEES as used herein shall mean the Trustees herein nominated and appointed and any successor Trustees designated in the manner provided herein.

SECTION 7. The term PENSION PROGRAM as used herein shall mean the program, method and procedure for the making of

regular contributions by Employers and/or Employees to the Pension Fund and the payment by the Trustees of benefits from the Pension Fund consistent with the terms of said collective bargaining agreements and the provisions of this Agreement and subject to such rules and regulations relating to eligibility requirements, retirement age, amount and computation of benefits and the general administration and operation of the Pension Fund as the Trustees may from time to time promulgate; and the said term shall be used interchangeably with the term "Pension Plan".

SECTION 8. The term **CONTRIBUTIONS** as used herein shall mean the payments required to be made to the Pension Fund by the Employer and the Employees under the collective bargaining agreement between the Employer and the Union.

SECTION 9. The term **HOUR OF WORK PAID FOR** as used herein and as employed in said collective bargaining agreements shall mean all hours of work up to eight hours per day actually worked by an Employee in a workweek from Monday through Sunday (including holidays); and shall, in addition, include up to eight hours per day for vacations and holidays not worked by an Employee, but for which the Employer has paid the Employee.

ARTICLE II.

CONTRIBUTIONS TO THE PENSION FUND

SECTION 1.* The contributions of the Employees shall be deducted by the Employer, and held by him until his payment over of the same to the Trustees, in the manner directed by the Trustees; and the Employer shall pay over the same, together with his own contributions, to the Trustees monthly, or at such other regular intervals on ten days' written notice, as the Trustees shall direct; provided, however, that all contributions paid to the Trustees shall be held by them in escrow, either by depositing the same

*As amended December 26, 1951.

in cash in a bank or by purchasing United States Government bonds, until they shall have formulated a Pension Plan which shall qualify under Section 165(a) of the Internal Revenue Code.

SECTION 2. The Trustees may compel and enforce the payment of the contributions in any manner which they may, in their sole and uncontrolled discretion, deem proper; and the Trustees may make such additional rules and regulations to facilitate and enforce the collection and payment thereof as they may deem appropriate.

SECTION 3. All contributions required from an Employer and his Employees in respect to each payroll period shall after their due date and until their payment over in full by the Employer to the Trustees be deemed to constitute a trust fund in the possession of such Employer; and said Employer shall be responsible and liable therefor as a fiduciary.

ARTICLE III.

FORMULATION OF THE PENSION PLAN, POWERS AND DUTIES OF THE TRUSTEES, EXPENSES AND FEES

SECTION 1. The Trustees shall, among other things:

- (a) Accept and receive all contributions and shall hold, invest, reinvest, manage and administer the same as part of the Pension Fund for the uses, purposes and trusts herein provided.
- (b) Accumulate all income, earnings and profits of the Pension Fund and receive and administer the same as a part thereof.

SECTION 2.* Consistent with the said collective bargaining agreements and the Labor Management Relations Act of 1947, the Trustees, in their sole discretion and without previous approval of or subsequent ratification by any party hereto or any Court, Tribunal or other body, shall:

*As amended December 26, 1951.

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(a) Formulate, adopt and administer a Pension Plan for the exclusive benefit of the Employees and their dependents or other specified beneficiaries in order to (1) provide pensions and/or pension benefits for participating Employees upon their retirement, and (2) if feasible in the opinion of the Trustees, furnish benefits for the dependents or other specified beneficiaries of such participating Employees who shall die while in the employ of an Employer; provided, however, that the pension plan to be formulated by the Trustees under this Article shall be such as to qualify under Section 165(a) of the Internal Revenue Code and any other applicable rules, regulations, requirements and provisions of law, so that contributions of Employers to the Pension Fund will be deductible by such Employers for tax purposes under said Code. The administration of such plan and its terms and provisions, as amended from time to time, shall be such that it shall at all times be qualified under the Internal Revenue Code, and all other applicable rules, regulations, requirements and provisions of law.

(b) Promulgate and establish rules and regulations for the administration and operation of the Pension Plan and of the Pension Fund in order to effectuate the purposes hereof; and in pursuance thereto (but without limitation on the powers of the Trustees by reason of such enumeration), formulate and establish the provisions to govern eligibility in respect to the participation of Employees in the Pension Fund and qualification for the payment of benefits to Employees and/or their dependents or other beneficiaries therefrom, the retirement age, the amount and computation of benefits, the method of providing pensions, the payment of premiums in the event that insurance policies or annuity contracts are part of the Pension Plan, the purchase, handling, control and disposition of retirement of funds and any and all other matters which the Trustees may deem necessary or appropriate to effectuate the purposes and intent of the Pension Program.

(c) Amend the Pension Plan from time to time, provided that such amendments comply with the purposes hereof. The Pension Plan and all amendments thereto adopted by the Trustees shall be filed by the Trustees as part of the records and minutes of the

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Trustees, and a copy thereof shall be sent to the Union, the ~~Associations~~ Associations and the Employers.

(d) Establish and accumulate as part of the Pension Fund such reserve or reserves as the Trustees shall in their opinion deem necessary or advisable for the sound and efficient administration of the Pension Plan.

(e) Purchase, acquire, receive, retain, administer, surrender or assign any life insurance or annuity contract and pay the premiums, and exercise the rights, privileges, options and benefits contained in any such contract, in the event that the Trustees determine that insurance policies or annuity contracts shall be acquired as part of the Pension Program.

(f) Receive any securities or other property included within the term "Funds" hereunder that are tendered to them and that they may deem to be acceptable.

(g) Pay out of the Trust Fund or withhold for satisfaction or payment all real and personal property taxes, income taxes (no income tax being contemplated to become due hereunder, as it is intended to have this Trust qualify at all times under the Internal Revenue Code, Section 165(a), as a tax exempt employee trust), and any other taxes at any time levied or assessed against or in respect to the Trust Fund or any part thereof; provided, however, that the Trustees may contest the validity of any tax and in determining to pay or contest the validity of any such tax, the Trustees may obtain the advice of counsel, and for all and any acts done or omitted to be done pursuant to the advice of such counsel, the Trustees shall be held completely harmless.

(h) Enter into agreements, contracts and other instruments for the deposit of funds with banks, trust companies or other institutions which accept and hold monies on deposit and authorize such depositary to act as custodian of the funds, whether in cash or securities or other property, and authorize such depositary to convert, invest and reinvest the funds, entirely or in part, into securities of any kind and nature whatsoever; and all withdrawals of monies from such account or accounts shall be made only by orders or

checks signed by the Trustees authorized in writing by the Trustees to sign the same. Except as hereinafter provided, no order or check for the withdrawal of funds shall be valid unless signed by two Trustees in any combination thereof, one of whom, however, shall be a Union Trustee (designated in writing by the Union Trustees) and one of whom shall be an Employer Trustee (designated in writing by the Employer Trustees).

(i) Subject to the provisions hereof, prescribe the manner in which the contributions from Employees shall be deducted and held by the Employers and the method and time of payment over by the Employers of said contributions and of their own contributions to the Trustees.

SECTION 3. In addition to all other rights, powers and prerogatives vested in them, the Trustees may:

(a) Purchase or subscribe for and invest and reinvest in any securities or other property, including bonds, preferred or common stocks of every kind and nature, commercial paper, or mortgages on property, even though such investments may not be authorized for the investment of trust funds under the laws applicable hereto, and retain such securities or other property as part of the Trust Fund; and in such investments and reinvestments, the Trustees shall not be bound as to the character of any investment by any statute, rule of court or custom governing the investment of trust funds, but shall be fully protected in making investments and reinvestments in, and exercising any rights, options and privileges granted in connection with, bonds, notes, mortgages, commercial paper, preferred stocks, common stocks, or other securities, or property, real or personal, including but not limited to shares and certificates of participation issued by investment companies or investment trusts, ordinary life insurance contracts, endowment insurance contracts, annuity contracts, retirement annuity contracts, retirement income contracts, or any other form or forms of contracts issued by insurance companies; and in making any such investment or reinvestment, the Trustees shall not be limited by the proportion which the investment so to be made, either alone

or with any other property of the same or similar character then held or acquired, may bear to the entire amount of the trust fund.

(b) Hold from time to time any or all of the Trust Fund in cash, uninvested and non-productive of interest or other income.

(c) Sell, transfer or dispose of any securities or other property at any time held by them for cash or on credit; and convert, or exchange any securities or other property at any time held by them for other securities or property which the Trustees may deem acceptable. Any such sale, transfer, disposition, conversion or exchange may be made publicly or by private arrangement and no person dealing with the Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition.

(d) Consent to the reorganization, consolidation, merger, dissolution, or readjustment of the finances, of any corporation, company or association any of the securities of which may at any time be held hereunder and exercise any option or options and make any agreement or subscription and pay any expenses, assessments or subscriptions in connection therewith and hold and retain any property acquired by means of the exercise of the powers expressed in this paragraph to the extent that it is acceptable to the Trustees.

(e) Institute any suit or legal proceeding of any kind or nature on behalf of the Pension Fund, and defend any suit or proceeding against or in respect to the Pension Fund.

(f) Compromise, submit to arbitration, settle or release any suit or legal proceeding, claim, debt, damage or undertaking due or owing from or to the Trust Fund on such terms and conditions as the Trustees may deem advisable. In the administration of the Trust Fund, the Trustees shall not be obligated to take any action which would subject them to any expense or liability unless they be first indemnified in an amount and in a manner satisfactory to them or be furnished with funds sufficient, in their sole judgment, to cover such expenses.

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(g) Register any securities or other property held in the Pension Fund with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity; and hold in bearer from any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of the Trustees shall show that all such investments are part of the Pension Fund.

(h) Lease or purchase such premises, materials, supplies and equipment, and employ and retain such legal counsel, investment counsel, administrative, accounting, actuarial, clerical, custodial and other assistants or employees as in their discretion the Trustees may deem necessary or appropriate and to pay their reasonable expenses and compensation out of the Trust Fund.

(i) Vote in person or by proxy or otherwise upon securities held by the Trustees and to exercise by attorney or in any other manner any other rights of whatsoever nature pertaining to securities or any other property at any time held by them hereunder.

(j) Make, execute and deliver as Trustees any and all instruments in writing necessary or proper for the effective exercise of any of the Trustees' powers as stated herein or otherwise necessary to accomplish the purposes of the Pension Fund and this Trust Agreement.

(k) Borrow money from others at any time and from time to time, upon such terms and conditions, including the payment of interest, as they may deem advisable, and for the sums so borrowed or advanced the Trustees may issue their promissory note or any other evidence of indebtedness as Trustees and secure the repayment thereof by the pledge of any securities or other property in their possession as Trustees hereunder.

(l) Apply to a court of competent jurisdiction for guidance with respect to the disposition of the Pension Fund; but nothing herein contained shall be deemed or construed as imposing any duty on the Trustees to make such application, or as a limitation of any kind or nature upon the powers, rights and prerogatives of the Trustees.

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(m) Promulgate such requirements for the participation of new Employers in this Trust Agreement and in the Pension Program and such other rules and regulations as they may, in their discretion, deem proper and necessary for the sound and efficient administration of the Trust, provided that such requirements, rules and regulations are not inconsistent with this Trust Agreement and Pension Program.

(n) Authorize any one or more of the Trustees to execute any notice or other instrument in writing and all persons, partnerships, corporations or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Pension Trust and the Trustees.

(o) Designate and authorize an employee of the Pension Fund to sign checks upon such separate and specific bank account or bank accounts as the Trustees may designate and establish for such purpose.

(p) Do all other acts, and take any and all other action, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

SECTION 4. The expenses incurred in the collection of contributions and in the administration and operation of the Pension Fund, including but without limitation all expenses which may be incurred in connection with the appointment of an Impartial Trustee, and other expenses herein referred to, shall be paid from the Pension Fund. No Trustee shall receive any compensation for the services rendered by him, unless he shall have been authorized by the Trustees to render special executive or administrative services in connection with the administration or operation of the Pension Fund and the amount, method and time of payment of such special compensation has been agreed to in advance. The Trustees may also pay such compensation to the Impartial Trustee for the services which may be performed by him as the Trustees may determine to be proper.

ARTICLE VII.

TERMINATION OF INDIVIDUAL EMPLOYERS

SECTION 1. An Employer shall cease to be an Employer under this Trust Agreement whenever

(a) Any contribution or other payment required to be made by such Employer to or for the account of the Pension Fund shall not be paid when due, or within such time as may be specified by the Trustees; or

(b) Such Employer terminates his business and/or fails or neglects to enter into a collective bargaining agreement with the Union providing for participation by such Employer in the Pension Fund.

SECTION 2. When, as provided in Section 1 of this Article, an Employer ceases to be an Employer hereunder, he shall have no further rights or powers under this Trust Agreement, except as hereinafter in this Article provided.

SECTION 3. An Employer who ceases to be an Employer hereunder for the reason stated in Section 1(a) of this Article, upon payment to the Trustees of all amounts then due from him, including such reasonable interest as may be demanded by the Trustees and any expenses incurred by reason of his default, may be reinstated hereunder by the Trustees, and in such event the Employees of such Employer shall again be entitled to the benefits of this Trust Agreement, subject to such conditions as may be provided therefor in the Pension Plan.

SECTION 4. An Employer who ceases to be an Employer hereunder for the reason stated in Section 1(a) of this Article shall continue to remain fully liable for all contributions and other payments required to be made hereunder. An Employer who ceases to be an Employer for the reason stated in Section 1(b) of this Article shall remain liable for all contributions due up to and including the date of termination as aforesaid in accordance with such rules and regulations as may be promulgated by the Trustees.

ARTICLE VIII.

TERMINATION OF THE TRUST

SECTION 1. This Trust Agreement and the Pension Plan may be terminated by an instrument in writing executed by all the Trustees when there is no longer in force an agreement between an Employer and the Union requiring any contributions from the Employer to the Pension Fund for the purposes hereinabove provided, except, however, that this Trust Agreement and the Pension Plan may also be sooner terminated by (a) the vote of the Executive Board of the Union, and (b) the concurring vote of a majority of the Employers present at a regular or special meeting of the Employers called for that purpose.

SECTION 2. In the event of the termination of the Trust Agreement and the Pension Plan, the Trustees shall apply the Pension Fund to pay or to provide for the payment of any and all obligations of the Pension Fund and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purpose of the Pension Fund; provided, however, that no part of the corpus or income of said Trust Fund shall be used for or diverted to purposes other than the exclusive benefit of employees, retired employees, or the families or beneficiaries of employees, or retired employees, or the administrative expenses of the Trust or the Pension Plan or for other payments in accordance with the provisions of such plan.

SECTION 3. Upon termination of the Trust Agreement and Pension Plan, the Trustees shall forthwith notify the Union and each Employer, and the insurance carrier or carriers of any policies which may be held as part of the Trust Fund, and also all other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust, and may take any action with regard to any policy or policies which may be required by the insurance carrier or carriers thereof and which the Trustees, in their discretion, may deem appropriate.

ARTICLE IX.

MISCELLANEOUS

SECTION 1. The Trustees and employees of the Pension Fund who are empowered and authorized to sign checks as provided in this Trust Agreement shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees. Each employee employed by the Trustees who may be engaged in handling monies of the Pension Fund shall also be bonded by a duly authorized surety company in the same manner. The cost of the premiums on such bonds shall be paid out of the Pension Fund.

SECTION 2. Each Employer shall promptly furnish to the Trustees on demand any and all records relating to his Employees which the Trustees shall require in writing. Each Employer shall also render to the Trustees with the payment of each contribution, or at such other regular intervals as the Trustees may request, such written reports relating to his Employees, including all information as to the wages paid to and hours worked by said Employees and the contributions due or payable to the Pension Fund, as the Trustees may require.

SECTION 3. The Trustees, or their authorized representatives, may examine the pertinent payroll books and records of each Employer whenever such examination may be deemed necessary or advisable by the Trustees in connection with the proper administration of the Pension Fund.

SECTION 4. No employee, or any person claiming by or through such employee by reason of having been named a beneficiary in a certificate or otherwise, shall have any right, title or interest in or to the funds or other property of the Pension Fund or any part thereof, except as specifically provided by the Trustees.

SECTION 5. No moneys, property or equity of any nature whatsoever in the Trust or Trust Fund or policies or benefits of moneys payable therefrom shall be subject in any manner, by any employee or person claiming through such employee, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien, or charge, and any attempt to cause the same to be subject thereto shall be null and void.

SECTION 6. Nothing contained in this Trust Agreement shall be deemed or construed to impose upon the Carrier or Truck Association any duty or obligation to collect, receive or pay over any of the contributions hereunder required to be made and paid by the Employers to the Trustees, nor shall either Association be deemed a guarantor or surety in respect to any such contributions.

SECTION 7. The failure of an Employer to pay the contributions required hereunder promptly when due shall be a violation of the collective bargaining agreement between the said Employer and the Union as well as a violation of the Employer's obligations hereunder. Non-payment by an Employer of any contributions when due shall not relieve any other Employer from his obligation to make payments. In addition to any other remedies to which the parties may be entitled, an Employer in default for five working days may be required in the discretion of the Trustees to pay such reasonable rate of interest as the Trustees may fix on the moneys due to the Trustees from the date when the payment was due to the date when payment is made, together with all expenses of collection incurred by the Trustees.

SECTION 8. All suits and proceedings to recover contributions, or any other payments due to the Trustees or the Pension Fund or to enforce or protect any other right, demand or claim on behalf of the Trustees or of the Pension Fund, may be instituted and prosecuted on behalf of the Pension Fund in its name as such, or by any two Trustees, one of whom shall be an Employer Trustee and one of whom shall be a Union Trustee, who may be thereunto authorized by the Trustees. Suits and proceedings to recover contributions due from Employers may also be instituted and prose-

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cuted by the Union; and in the event of any recovery theret.. by the Union, the amount of such recovery, less the cost and expense incurred by the Union in connection with such suit or proceeding, shall be promptly turned over to the Pension Fund by the Union.

SECTION 9. The Trustees shall have and maintain an office in the City and County of New York, which shall be deemed the situs and office of the Pension Fund. The Trustees may from time to time change the location of said office within the City and County of New York, but no change shall be effective until notice thereof shall have been given to the Union, the Associations and the Employers.

SECTION 10. The address of the Union, the Associations and of each of the Employers shall be that stated in this Trust Agreement, or in the collective bargaining agreement executed between each respective Employer and the Union. The address of the Union, Associations and Employer for purposes hereof may be changed by the Union, Associations or Employer, as the case may be, by written notice to the Trustees stating the new address, and such changed address shall be kept on file by the Trustees open to the inspection of each Trustee, the Union, the Associations and Employers.

SECTION 11. Notices given to the Trustees, the Union, the Associations, or any Employer hereunder shall, unless herein otherwise specified, be sufficient if in writing and delivered to, or sent by postpaid first class mail or prepaid telegram to, the respective addresses thereof at his, their or its address above stated or changed as above provided. Except as herein otherwise provided, distribution or delivery of any statement or document required hereunder to be made to the Trustees, Associations, Union, or Employers shall be sufficient if delivered in person or if sent by postpaid first class mail to his, their or its respective address above stated or changed as above provided.

ARTICLE X.

CONSTRUCTION OF TRUST AGREEMENT

SECTION 1. The provisions of this Trust Agreement shall be liberally construed in order to promote and effectuate the establishment and operation of the pension program herein contemplated. The Trustees shall have power to interpret, apply and construe the provisions of this Trust Agreement, and any construction, interpretation and application adopted by the Trustees in good faith shall be binding upon the Union, the Associations, the Employers and the Employees.

SECTION 2. All rules, regulations, provisions and requirements established or promulgated by the Trustees pursuant to the terms hereof shall be deemed incorporated in and made a part of this Trust Agreement and shall be binding upon the parties hereto with the same force and effect as if herein originally contained.

SECTION 3. In all litigation involving this Trust Agreement or the Pension Fund or Pension Program, this Trust Agreement and the Pension Fund and Pension Program shall be construed, regulated and administered under the laws of the State of New York. All contributions received by the Trustees hereunder shall be deemed to have been received in the State of New York; and the Trustees shall be accountable only in the State of New York.

SECTION 4. In the event that any provisions of this Trust Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Trust Agreement; and the provision or provisions held illegal or invalid shall be fully severable and the Trust Agreement shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

ARTICLE XI.

AMENDMENTS*

Consistent with the provisions of the collective bargaining agreements aforesaid, this Trust Agreement may be amended, modified, and varied, in any respect whatever, including but not limited to benefits, eligibility requirements, qualifications, effective dates and the like, from time to time by the Trustees, provided that all such amendments comply with the uses, purposes and trusts herein provided and provided further that no amendment shall divert any property from the Trust Fund. Each such amendment shall be duly executed in writing by the Trustees and filed by the Trustees as part of the records and minutes of the Trustees, and a copy thereof shall be sent to the Union, the Associations and the Employers. The Trustees shall have full power in their sole discretion to fix the effective date of any amendment.

ARTICLE XII.

EXECUTION OF TRUST AGREEMENT

SECTION 1. This Trust Agreement may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of his execution hereof.

SECTION 2. An Employer may become a party to this Trust Agreement by executing a counterpart hereof, or by authorizing either the Carrier Association or the Truck Association in writing to advise the Trustees in writing of the adoption of this Trust Agreement by said Employer, or by executing any other written instrument wherein he agrees to participate in the Pension Fund pursuant to the terms of this Trust Agreement.

*As amended December 26, 1951.

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General Counsel's Exhibit 6

IN WITNESS WHEREOF, the undersigned do hereunto set their hands and seals as of the date first above written.

TRUCK DRIVERS LOCAL UNION NO. 807, I. B. T.
C. W. & H., A. F. OF L.

By JOHN E. STRONG (L. S.)
President

THOMAS L. HICKEY (L. S.)
Secretary-Treasurer

THE MOTOR CARRIER ASSOCIATION OF NEW YORK, INC.

By JOS. M. ADELIZZI (L. S.)
Managing Director

THE NEW YORK STATE MOTOR TRUCK ASSOCIATION, INC.

By FRANK B. KURTZ (L. S.)
Managing Director

UNION TRUSTEES

JOHN E. STRONG (L. S.)
THOMAS L. HICKEY (L. S.)
DAVID W. FRECHETTE (L. S.)

EMPLOYER TRUSTEES

JOS. M. ADELIZZI (L. S.,
CLARENCE E. GALSTON (L. S.)
By ARTHUR M. BLUESTINE (L. S.)

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General Counsel's Exhibit 6

Consented and agreed to:

EMPLOYERS WAGE SCALE COMMITTEE

By Jos. M. ADELIZZI (L. S.)
Chairman

AGREEMENT AND DECLARATION OF TRUST

PENSION FUND OF THE N Y C TRUCKING INDUSTRY —
LOCAL 807

July 25, 1966

The Pension Fund is a direct result of harmonious labor relations and a recognition of the responsibility which management has to labor and which labor has to management.

Management's responsibility is to provide job opportunities, security and good working conditions. The responsibility of labor is to give a good day's work and uninterrupted productivity. Certainly, the man on the job recognizes that for all practical everyday purposes, the future of the industry depends largely on him.

PENSION FUND OF THE N Y C TRUCKING INDUSTRY
LOCAL 807

BOARD OF TRUSTEES

Union Trustees

JOSEPH F. MANGAN
WALTER O'LEARY
HARRY J. THOMPSON

Employer Trustees

JOS. M. ADELIZZI
GEORGE V. CONBOY
JAMES F. WHELAN

Impartial Chairman

HUGH E. SHERIDAN

Fund Administrator

PETER J. FASANELLA

Legal Counsel

COHN & GLICKSTEIN ZELBY & BURSTEIN

Certified Public Accountants

SINGERMAN & CAPUSTIN COMPANY

Consultants

MARTIN E. SEGAL & COMPANY

AGREEMENT AND DECLARATION OF TRUST made and entered into the 1st day of December, 1950, and as amended as of July 25, 1966, in the City, County and State of New York, by and between TRUCK DRIVERS LOCAL UNION No. 807, I. B. T. C. W. & H., presently having its headquarters at 32-43 49th Street, Long Island City, N. Y. 11103 (hereinafter called the "Union"), and various employers in the trucking industry doing business in and about the City of New York, who have adopted this Agreement and Declaration of Trust, as hereinbelow set forth (hereinafter called the "Employers"), and JOSEPH F. MANGAN, WALTER O'LEARY and HARRY J. THOMPSON (who, with their successors designated in the manner hereinafter provided, are herein called the "Union Trustees"), and Jos. M. ADELIZZI, GEORGE V. CONBOY and JAMES F. WHELAN (who, with their successors designated in the manner hereinafter provided, are herein called the "Employer Trustees"), hereinafter collectively called the "Trustees".

WITNESSETH:

WHEREAS, the Union and the said Employers have heretofore executed or hereafter will execute collective bargaining agreements or supplements thereto providing, among other things, for the establishment and continuation of a pension fund at the expense of said Employers for their employees who are represented for purposes of collective bargaining by the Union; and

WHEREAS, the parties desire to establish said pension fund as a trust fund to be known as the Pension Fund of the N Y C Trucking Industry-Local 807 (hereinafter called the "Pension Fund"), to designate Trustees to receive, hold and administer the same and to define the powers, duties and responsibilities of the Trustees,

Now, THEREFORE, in consideration of the premises, and in order to create and establish said trust fund, it is hereby mutually declared, understood and agreed as follows:

ARTICLE I.

DEFINITIONS

SECTION 1. *Employer.* The term "EMPLOYER" as used herein shall mean each employer who has presently in force or who hereafter

executes a collective bargaining agreement with the Union providing for such Employer's participation in the Pension Fund and who has adopted this Agreement and Declaration of Trust (hereinafter called the "Trust Agreement") in the manner herein provided. For the purposes of this Agreement, the Union shall be deemed to be an Employer within this definition, provided, however, that the Union shall not be deemed to be an Employer for the purpose of the removal or the appointment of Employer Trustees.

SECTION 2. Employees. The term "EMPLOYEES" as used herein shall mean all employees covered by a collective bargaining agreement between an Employer and the Union providing for such Employer's participation in the Pension Fund, and shall be deemed to include any employees who may leave the employ of one Employer and enter the employ of another Employer as herein defined. For the purposes of this Agreement, the Union shall be deemed to be an Employer within this definition, and employees of the Union, on whose behalf the Union agrees to contribute to the Fund, shall be deemed to be employees within this definition, provided, however, that the Union shall not be deemed to be an Employer for the purpose of the removal or the appointment of Employer Trustees.

SECTION 3. Pension Fund. The term "PENSION FUND" as used herein shall mean all contributions to the trust fund created hereunder received by the Trustees under said collective bargaining agreements and any additional contributions thereto that may hereafter be agreed upon by the parties under collective bargaining agreements, or any modifications, amendments, revisions or extensions thereof, together with all income, increments, earnings and/or profits therefrom, and all other funds (as herein defined) received by the Trustees for the uses, purposes and trusts set forth in this Trust Agreement.

SECTION 4. Pension Trust. The term "PENSION TRUST" as used herein shall mean the Pension Fund as held hereunder by the Trustees; and said term, from time to time, shall be used interchangeably with the terms "Pension Fund" and "Trust Fund".

SECTION 5. *Fund or Funds.* The term "FUND" or "FUNDS" as used herein shall mean (1) cash, (2) credits, (3) stocks either common (with or without voting power) or preferred (with or without present or future voting rights in the event of the happening of a preference condition), (4) bonds, (5) notes, (6) other property or securities or interests in property (real, personal or mixed) whether or not such funds meet the requirements of legal investments for trust funds in any state or jurisdiction and (7) any life insurance or annuity contract or contracts issued by a life insurance company held in or forming a part of the Pension Fund.

SECTION 6. *Trustees.* The term "TRUSTEES" as used herein shall mean the Trustees herein named, together with their successors designated in the manner provided herein.

SECTION 7. *Pension Program.* The term "PENSION PROGRAM" as used herein shall mean the program, method and procedure for the making of regular contributions by Employers to the Pension Fund and the payment by the Trustees of benefits from the Pension Fund consistent with the terms of said collective bargaining agreements and the provisions of this Trust Agreement and subject to such rules and regulations relating to eligibility requirements, retirement age, amount and computation of benefits and the general administration and operation of the Pension Fund as the Trustees may from time to time promulgate, and the said term shall be used interchangeably with the term "Pension Plan".

SECTION 8. *Contributions.* The term "CONTRIBUTIONS" as used herein shall mean the payments required to be made to the Pension Fund by the Employer under the collective bargaining agreement between the Employer and the Union.

SECTION 9. *Hour of Work Paid For.* The term "HOUR OF WORK PAID FOR" as used herein and as employed in said collective bargaining agreements shall mean all hours of work up to eight hours per day actually worked by an Employee in a workweek from Monday through

Sunday (including holidays); and shall, in addition, include up to eight hours per day for vacations and holidays not worked by an Employee, but for which the Employer has paid the Employee.

ARTICLE II.

CONTRIBUTIONS TO THE PENSION FUND

SECTION 1. In order to carry out and effectuate the purposes hereof, each Employer shall pay monthly to the Pension Fund on or before the 10th day of each month, or at such other regular intervals as the Trustees may determine, commencing with the month immediately succeeding the date of this Agreement and Declaration of Trust as hereinabove set forth, or such other date as may be provided by agreement between such Employer and the Union, and continuing until the expiration date of such Employer's collective bargaining agreement with the Union, the pension contributions set forth in the collective bargaining agreement, so as to provide the benefits prescribed by the Trustees of the Pension Fund, the amount necessary for reserves and for the administration of the Pension Fund. The benefits, the amount necessary for reserves and for the administration of the Pension Fund shall be fixed and determined by the Trustees in their sole and exclusive discretion.

SECTION 2. The Trustees may compel and enforce the payment of the Employer's contributions in any manner which they may, in their sole and uncontrolled discretion, deem proper; and the Trustees may make such additional rules and regulations to facilitate and enforce the collection and payment thereof as they may deem appropriate.

SECTION 3. All contributions required from an Employer in respect to each payroll period shall after their due date and until their payment over in full by the Employer to the Trustees be deemed to constitute a trust fund in the possession of such Employer; and said Employer shall be responsible and liable therefor as a fiduciary.

ARTICLE III.

FORMULATION OF THE PENSION PLAN, POWERS AND DUTIES OF THE TRUSTEES, EXPENSES AND FEES

SECTION 1. The Trustees shall, among other things:

- (a) Accept and receive all contributions and shall hold, invest, reinvest, manage and administer the same as part of the Pension Fund for the uses, purposes and trusts herein provided.
- (b) Accumulate all income, earnings and profits of the Pension Fund and receive and administer the same as a part thereof.

SECTION 2. Consistent with the said collective bargaining agreements and the Labor Management Relations Act of 1947, the Trustees, in their sole discretion and without previous approval of or subsequent ratification by any party hereto or any Court, Tribunal or other body, shall:

- (a) Formulate, adopt and administer a Pension Plan for the exclusive benefit of the Employees and their dependents or other specified beneficiaries in order to (1) provide pensions and/or pension benefits for participating Employees upon their retirement, and (2) if feasible in the opinion of the Trustees, furnish benefits for the dependents or other specified beneficiaries of such participating Employees who shall die while in the employ of an Employer; provided, however, that the pension plan to be formulated by the Trustees under this Article shall be such as to qualify under Section 165(a) of the Internal Revenue Code and any other applicable rules, regulations, requirements and provisions of law, so that contributions of Employers to the Pension Fund will be deductible by such Employers for tax purposes under said Code, it being the express intention of the parties that approval of such plan by the United States Treasury Department shall be obtained before it becomes effective. The administration of such plan and its terms and provisions, as amended from time to time, shall be such that it shall at all times be qualified under the Internal Revenue Code, and all other applicable rules, regulations, requirements and provisions of law.

(b) Promulgate and establish rules and regulations for the administration and operation of the Pension Plan and of the Pension Fund in order to effectuate the purposes hereof; and in pursuance thereto (but without limitation on the powers of the Trustees by reason of such enumeration), formulate and establish the provisions to govern eligibility in respect to the participation of Employees in the Pension Fund and qualification for the payment of benefits to Employees and/or their dependents or other beneficiaries therefrom, the retirement age, the amount and computation of benefits, the method of providing pensions, the payment of premiums in the event that insurance policies or annuity contracts are part of the Pension Plan, the purchase, handling, control and disposition of retirement income contracts, policies and annuities, the investment of funds and any and all other matters which the Trustees may deem necessary or appropriate to effectuate the purposes and intent of the Pension Program.

(c) Amend the Pension Plan from time to time, provided that such amendments comply with the purposes hereof. The Pension Plan and all amendments thereto adopted by the Trustees shall be filed by the Trustees as part of the records and minutes of the Trustees, and a copy thereof shall be sent to the Union and the Employers.

(d) Establish and accumulate as part of the Pension Fund such reserve or reserves as the Trustees shall in their opinion deem necessary or advisable for the sound and efficient administration of the Pension Plan.

(e) Purchase, acquire, receive, retain, administer, surrender or assign any life insurance or annuity contract and pay the premiums, and exercise the rights, privileges, options and benefits contained in any such contract, in the event that the Trustees determine that insurance policies or annuity contracts shall be acquired as part of the Pension Program.

(f) Receive any securities or other property included within the term "Funds" hereunder that are tendered to them and that they may deem to be acceptable.

(g) Pay out of the Trust Fund or withhold for satisfaction or payment all real and personal property taxes, income taxes (no income

tax being contemplated to become due hereunder, as it is intended to have this Trust qualify at all times under the Internal Revenue Code, Section 165(a), as a tax exempt employee trust), and any other taxes at any time levied or assessed against or in respect to the Trust Fund or any part thereof; provided, however, that the Trustees may contest the validity of any tax and in determining to pay or contest the validity of any such tax, the Trustees may obtain the advice of counsel, and for all and any acts done or omitted to be done pursuant to the advice of such counsel, the Trustees shall be held completely harmless.

(h) Enter into agreements, contracts and other instruments for the deposit of funds with banks, trust companies or other institutions which accept and hold monies on deposit and authorize such depository to act as custodian of the funds, whether in cash or securities or other property, and authorize such depository to convert, invest and reinvest the funds, entirely or in part, into securities of any kind and nature whatsoever; and all withdrawals of monies from such account or accounts shall be made only by orders or checks signed by the Trustees authorized in writing by the Trustees to sign the same. Except as hereinafter provided, no order or check for the withdrawal of funds shall be valid unless signed by two Trustees in any combination thereof, one of whom, however, shall be a Union Trustee (designated in writing by the Union Trustees) and one of whom shall be an Employer Trustee (designated in writing by the Employer Trustees).

(i) Subject to the provisions hereof, prescribe the method and time of payment over by the Employers of their contributions to the Trustees.

SECTION 3. In addition to all other rights, powers and prerogatives vested in them, the Trustees may:

(a) Purchase or subscribe for and invest and reinvest in any securities or other property, including bonds, preferred or common stocks of every kind and nature, commercial paper, or mortgages on property, even though such investments may not be authorized for the investment of trust funds under the laws applicable hereto, including interests in any trust fund that has been or shall be created and maintained by any depository appointed under Article III, Section 2, Sub-

paragraph (h) above as trustee for the collective investment of funds of trusts for employee benefit plans qualified under Section 401(a) of the Internal Revenue Code of 1954 (or corresponding provision of any subsequent Federal revenue law at the time in effect), and any investment in any such trust fund, after having been made, shall be subject to and governed by the declaration of trust or the instrument creating such trust fund, together with any amendments, modifications or supplements thereof, and to such extent, and only to such extent and for no other purpose, said declaration of trust or the instrument creating such trust fund together with any amendments, modifications or supplements thereof are hereby incorporated herein; and retain such securities or other property as part of the Trust Fund; and in such investments and reinvestments, the Trustees shall not be bound as to the character of any investment by any statute, rule of court or custom governing the investment of trust funds, but shall be fully protected in making investments and reinvestments in, and exercising any rights, options and privileges granted in connection with, bonds, notes, mortgages, commercial paper, preferred stocks, common stocks, or other securities, or property, real or personal, including but not limited to shares and certificates of participation issued by investment companies or investment trusts, ordinary life insurance contracts, endowment insurance contracts, annuity contracts, retirement annuity contracts, retirement income contracts, or any other form or forms of contracts issued by insurance companies; and in making any such investment or reinvestment, the Trustees shall not be limited by the proportion which the investment so to be made, either alone or with any other property of the same or similar character then held or acquired, may bear to the entire amount of the trust fund.

(b) Hold them time to time any or all of the Trust Fund in cash, uninvested and non-productive of interest or other income.

(c) Sell, transfer or dispose of any securities or other property at any time held by them for cash or on credit; and convert, or exchange any securities or other property at any time held by them for other securities or property which the Trustees may deem acceptable. Any such sale, transfer, disposition, conversion or exchange may be made publicly or by private arrangement and no person dealing with the

Trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition.

(d) Consent to the reorganization, consolidation, merger, dissolution, or readjustment of the finances, of any corporation, company or association any of the securities of which may at any time be held hereunder and exercise any option or options and make any agreement or subscription and pay any expenses, assessments or subscriptions in connection therewith and hold and retain any property acquired by means of the exercise of the powers expressed in this paragraph to the extent that it is acceptable to the Trustees.

(e) Institute any suit or legal proceeding of any kind or nature on behalf of the Pension Fund, and defend any suit or proceeding against or in respect to the Pension Fund.

(f) Compromise, submit to arbitration, settle or release any suit or legal proceeding, claim, debt, damage or undertaking due or owing from or to the Trust Fund on such terms and conditions as the Trustees may deem advisable. In the administration of the Trust Fund, the Trustees shall not be obligated to take any action which would subject them to any expense or liability unless they be first indemnified in an amount and in a manner satisfactory to them or be furnished with funds sufficient, in their sole judgment, to cover such expenses.

(g) Register any securities or other property held in the Pension Fund with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity; and hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of the Trustees shall show that all such investments are part of the Pension Fund.

(h) Lease or purchase such premises, materials, supplies and equipment, and employ and retain such legal counsel, investment counsel, administrative, accounting, actuarial, clerical, custodial and other assistants or employees as in their discretion the Trustees may deem necessary or appropriate and to pay their reasonable expenses and compensation out of the Trust Fund.

- (i) Vote in person or by proxy or otherwise upon securities held by the Trustees and to exercise by attorney or in any other manner any other rights of whatsoever nature pertaining to securities or any other property at any time held by them hereunder.
- (j) Make, execute and deliver as Trustees any and all instruments in writing necessary or proper for the effective exercise of any of the Trustees' powers as stated herein or otherwise necessary to accomplish the purposes of the Pension Fund and this Trust Agreement.
- (k) Borrow money from others at any time and from time to time, upon such terms and conditions, including the payment of interest, as they may deem advisable, and for the sums so borrowed or advanced the Trustees may issue their promissory note or any other evidence of indebtedness as Trustees and secure the repayment thereof by the pledge of any securities or other property in their possession as Trustees hereunder.
- (l) Apply to a court of competent jurisdiction for guidance with respect to the disposition of the Pension Fund; but nothing herein contained shall be deemed or construed as imposing any duty on the Trustees to make such application, or as a limitation of any kind or nature upon the powers, rights and prerogatives of the Trustees.
- (m) Promulgate such requirements for the participation of new Employers in this Trust Agreement and in the Pension Plan and such other rules and regulations as they may, in their discretion, deem proper and necessary for the sound and efficient administration of the Trust, provided that such requirements, rules and regulations are not inconsistent with this Trust Agreement and Pension Plan.
- (n) Authorize any one or more of the Trustees to execute any notice or other instrument in writing and all persons, partnerships, corporations or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Pension Fund and the Trustees.
- (o) Designate and authorize an employee of the Pension Fund to sign checks upon such separate and specific bank account or bank accounts as the Trustees may designate and establish for such purpose.

(p) Make application to the Federal Housing Administration for approval as a mortgagee under the provisions of the National Housing Act; to submit applications to the Federal Housing Administration for insurance of mortgages; and, to enter into any agreements, execute any documents or papers, and furnish any information required or deemed necessary or proper by the Federal Housing Administration in effecting such applications and such insurance; and that the Federal Housing Administration is authorized to rely upon the foregoing resolution and to deal with such Trustees as the authorized agents of the Pension Fund until receipt of written notice from the Trustees of the Pension Fund to the contrary.

(q) Do all other acts, and take any and all other action, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

SECTION 4. The expenses incurred in the collection of contributions and in the administration and operation of the Pension Fund, including but without limitation all expenses which may be incurred in connection with the appointment of an Impartial Trustee, and other expenses herein referred to, shall be paid from the Pension Fund. No Trustee shall receive any compensation for the services rendered by him, unless he shall have been authorized by the Trustees to render special executive or administrative services in connection with the administration or operation of the Pension Fund and the amount, method and time of payment of such special compensation has been agreed to in advance. The Trustees may also pay such compensation to the Impartial Trustee for the services which may be performed by him as the Trustee may determine to be proper.

ARTICLE IV.

ACCOUNTS AND RECORDS

SECTION 1. All income, profits, recoveries, contributions, forfeitures and any and all monies, securities and properties of any kind at any time received or held by the Trustees hereunder shall be held for the uses and purposes hereof as a commingled trust fund. Separate accounts or records may be maintained for operational and accounting

purposes but no such account or record shall be considered as segregating any funds or property from any other funds or property contained in the commingled fund.

SECTION 2. The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be open to the inspection of each of the Trustees at all times and which shall be audited annually or oftener as determined by the Trustees, by a certified public accountant selected by the Trustees. Such audits shall be available at all times for inspection by the Union, the Employers and Employees at the principal office of the Pension Fund.

SECTION 3. The Pension Fund shall be valued by the Trustees annually at the market values as of the close of business at the end of the last business day preceding the anniversary date of the Pension Plan, but the value of any life insurance or annuity contracts shall not be included in such valuation; and in making such valuation, the Trustees may engage the help, and pay the expenses of, such persons as they may select.

SECTION 4. The Trustees may, in their discretion, at any time or from time to time, but shall not less frequently than once each year beginning with the period ending the 31st day of December, 1966, render written accounts of their transactions and of the administration of the Pension Fund, file the same with the Employers and the Union, and post and/or maintain a copy at the office of the Pension Fund simultaneously with the mailing of copies of the same as hereinabove provided. Each Employer, the Union and Employee involved shall be deemed to have approved any such account unless he or it shall file with the Trustees written objections thereto within sixty (60) days thereafter and shall institute a suit or action in connection therewith not later than ninety (90) days after the objections have been ruled upon by the Trustees and notification of such ruling has been given in writing by the Trustees to the objectant. In the absence of such objection and suit, the Trustees shall be released, relieved and discharged with respect to all matters and things set forth in such account as though the same had been settled by the decree of a court of competent jurisdiction.

ARTICLE V.

INDEMNIFICATION OF TRUSTEES

SECTION 1. Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Pension Fund contracted by them as such Trustees, or for the non-fulfillment of contracts, but the same shall be paid out of the Trust Fund and the Trust Fund is hereby charged with a first lien in favor of such Trustees for his or their security and indemnification for any amounts paid out by such Trustee for any such liability and for his and their security and indemnification against any liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own wilful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

SECTION 2. The Trustees and each individual Trustee shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of the Trust so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own wilful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any agent or attorney elected or appointed by or acting for the Trustees.

SECTION 3. The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

SECTION 4. The Trustees shall not be liable for the proper application of any part of the Pension Fund or for any other liabilities

arising in connection with the administration or operation of the Trust Fund, except as herein provided.

SECTION 5. The Trustees may from time to time consult with the Trust's legal counsel and shall be fully protected in acting upon the advice of such counsel in respect to legal questions.

SECTION 6. The Trustees may, in their sole discretion, seek judicial protection by any action or proceeding they may deem necessary to settle their accounts, or to obtain a judicial determination or declaratory judgment as to any question of construction of the Trust Agreement or instruction as to any action thereunder. The Trustees shall be required to join as parties defendant in any such action or proceeding only the Union although the Trustees may also join such other parties therein as they may deem necessary or appropriate.

SECTION 7. In addition to the indemnification provided in Section 1 hereof, the parties agree to indemnify and save harmless the Trustees against any liability, loss, cost or damage that the Trustees may incur in the exercise and performance of their duties and powers hereunder, and, further, to indemnify and protect the Trustees from any and all claims, demands, suits or proceedings, at law or in equity, that may be brought against them by Employees or their beneficiaries or legal representatives.

SECTION 8. The Trustees shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Trustees at the principal place of business of the Pension Fund.

SECTION 9. No person, partnership, corporation or association dealing with the Trustees shall be obliged to see to the application of any funds, securities or other property paid or delivered to the Trustees as a purchase price or otherwise or to see that the terms of the Trust have been complied with or be obliged to inquire into the authority of the Trustees or the necessity or expediency of any act of the Trustees and every instrument effected by the Trustees shall be conclusive in favor of any person, partnership, corporation or association relying

thereon that (1) at the time of the delivery of said instrument the Trust was in full force and effect; (2) said instrument was effected in accordance with the terms and conditions of this Trust Agreement; and (3) the Trustees were duly authorized and empowered to execute such instrument.

ARTICLE VI.

APPOINTMENT, MEETINGS, RESIGNATION, REMOVAL, ETC., OF TRUSTEES

SECTION 1. The Trustees hereunder shall be six (6) in number, three (3) of whom shall be Union Trustees and three (3) of whom shall be Employer Trustees.

The Union Trustees shall be Joseph F. Mangan, Walter O'Leary and Harry J. Thompson.

The Employer Trustees shall be Jos. M. Adelizzi, George V. Conboy and James F. Whelan.

The above named Trustees, each for himself, accept their appointment as Trustees and consent to act as Trustees hereunder, and declare and agree that they will receive and hold the Pension Fund as Trustees under and by virtue of the terms, conditions and provisions of this Trust Agreement and for the uses, purposes and trusts and with the powers and duties herein set forth and none others.

SECTION 2. An Impartial Trustee shall be selected by the concurring vote of at least two Employer Trustees and two Union Trustees at the first regular meeting of the Trustees after the date of this Trust Agreement. The Impartial Trustee shall be empowered to act only in the event of a deadlock between the Trustees and only for the purpose of deciding the matter or question in dispute which constitutes the subject of the deadlock. A deadlock shall be deemed to exist between the Trustees whenever a proposed action at any regular or special meeting of the Trustees fails to obtain the concurring vote of at least two Employer Trustees and two Union Trustees. A deadlock shall also be deemed to exist whenever the lack of a necessary quorum of Trustees continues for two successive meetings of the Trustees, or when at two

successive meetings the minimum number of affirmative votes needed of the Employer Trustees or of the Union Trustees to validate any action of the Trustees cannot be obtained. In the event of a deadlock as hereinabove set forth, the decision of the Impartial Trustee with respect to the matter or question in dispute constituting the subject of the deadlock shall be final and binding and shall be adopted by the Trustees and deemed to be the vote of the Trustees.

SECTION 3. In the event of the failure of the Trustees to agree on an Impartial Trustee within fourteen days after their first regular meeting, as aforesaid, then and in that event, the Impartial Trustee shall be designated by a Judge of the United States District Court for the Southern District of New York upon the petition of any two Trustees, which said petition shall be made on five days' notice to the other Trustees.

SECTION 4. The Impartial Trustee designated as hereinabove provided shall serve for a period of one year until the next anniversary date of this Trust Agreement and until the selection of his successor as herein provided. A successor Impartial Trustee for successive annual terms commencing with the first anniversary date of this Trust Agreement shall be designated in the same manner as hereinabove provided for the designation of the original Impartial Trustee.

SECTION 5. The Impartial Trustee shall be subject to removal at any time at a meeting of the Trustees by the concurring vote of at least two Employer Trustees and two Union Trustees. In the event of such removal, or in the event of the death, incapacity, or resignation of the Impartial Trustee, prior to the expiration of his annual term, as aforesaid, the selection of his successor for the expiration of such term, shall be made in the same manner as hereinabove provided for the designation of the original Impartial Trustee.

SECTION 6. Meetings of the Trustees shall be held at least four times a year at such time and place as may be fixed by the Trustees. Meetings of the Trustees shall be held on not less than five days and not more than ten days' written notice to the Trustees. Meetings of the Trustees may be called by the Impartial Trustee in his discretion;

and shall be called by the Impartial Trustee at the written request of any two Trustees. Notice of any meeting of the Trustees may be waived in writing by any Trustee.

SECTION 7. A quorum at all meetings of the Trustees, regular or special, shall consist of at least two Employer Trustees and two Union Trustees. Except as otherwise in this Trust Agreement expressly provided, no action may be taken by the Trustees at any meeting except with the concurring vote of at least two Employer Trustees and two Union Trustees. Action may also be taken by the Trustees without a meeting, provided, however, that in such case such action shall be in writing and there shall be unanimous written concurrence therein by all of the Trustees then in office, including at least two Employer Trustees and two Union Trustees.

SECTION 8. All actions of the Trustees at meetings called and held as aforesaid shall be recorded in a regular minute book to be maintained at the office of the Pension Fund.

SECTION 9. Each Trustee above named and each successor Trustee shall continue to serve as such until his death, incapacity, resignation, or removal, as herein provided.

SECTION 10. A Trustee may resign upon giving thirty (30) days' notice in writing to the remaining Trustees, or such shorter notice as the remaining Trustees may accept as sufficient. Such resignation shall be effective on the date specified in the notice or on the date of the appointment of a successor Trustee, whichever first occurs; and from and after the effective date of such resignation, the resigned Trustee shall be fully discharged from all of his duties and privileges hereunder.

SECTION 11. Any Employer Trustee may be removed from office at any time by an instrument in writing duly signed by a majority of the Employers, or by a majority of the Employer Trustees then in office at a special meeting of the Trustees called for such purpose or by a vote of the Employers at a special meeting of the Employers called

and held as hereinbelow provided in Section 12 of this Article. Any Union Trustee may be removed from office at any time by a resolution of the Executive Board of the Union duly certified by the President and by the Secretary or Treasurer of the Union, in writing.

SECTION 12. Upon the death, incapacity, resignation, or removal of an Employer Trustee, then within five (5) days thereafter a successor Employer Trustee shall be immediately appointed by the two remaining Employer Trustees, if there be two such Trustees then in office. If there shall not then be two Employer Trustees in office, or if the said two remaining Employer Trustees cannot agree within ten (10) days of the occurrence of such vacancy on a third Employer Trustee to succeed the Employer Trustee who has died, become incapable of acting, or who has resigned or been removed, then such successor Employer Trustee shall be designated either by an instrument in writing duly signed by a majority of the Employers, or by a majority vote of the Employers present at a special meeting of the Employers called and held at such time and place as may be fixed by the Trustees and on not less than ten (10) days' notice in writing mailed to each Employer by the Impartial Trustee. The said notice of meeting shall specify the purpose thereof. The presiding officer at such special meeting of Employers shall be an Employer Trustee designated for that purpose by the Trustees; failing such designation, the presiding officer thereat shall be the Impartial Trustee. A quorum for the purpose of taking any action at such special meeting shall consist of not less than twenty-five (25) Employers. The election of the successor Employer Trustee at such meeting shall take place in such manner as may be approved by a majority of the Employers present thereat. Upon the filing with the remaining Trustees of an instrument in writing designating said successor Employer Trustee duly signed by a majority of the Employers as hereinabove provided, or in the event that said successor Employer Trustee has been designated at a special meeting of the Employers called and held as aforesaid, then in such event upon the filing with the remaining Trustees of a certificate in writing by the Trustee (or Impartial Trustee) who presided at said meeting certifying to the designation of said successor Employer Trustee thereat, such designation shall thereupon be effective and binding in all respects.

SECTION 13. Upon the death, incapacity, resignation, or removal of a Union Trustee, then within five (5) days thereafter a successor Union Trustee shall be immediately appointed by the Chairman of the Executive Board of the Union, subject to the approval of the said Executive Board. Such appointment shall be certified by the President (or by the Chairman of the Executive Board) and by the Secretary or the Treasurer of the Union, in writing. Upon the filing with the remaining Trustees of such written certification, the designation of said successor Union Trustee shall be effective and binding in all respects.

SECTION 14. It is the intention hereof that the Pension Fund shall at all times be administered by an equal number of Employer Trustees and Union Trustees, but until the appointment of a successor Trustee or Trustees, as hereinabove provided, the remaining Trustees shall have full power to act, provided that at all times there shall be at least two Employer Trustees and two Union Trustees. Any successor Employer Trustee or any successor Union Trustee shall immediately upon his designation as a successor Trustee and his acceptance of the trusteeship in writing, filed with the Trustees, become vested with all the property, rights, powers and duties of a Trustee hereunder with like effect as if originally named as a Trustee and all the Trustees then in office and all other necessary persons shall be immediately notified of the designation of such successor Trustee.

ARTICLE VII.

TERMINATION OF INDIVIDUAL EMPLOYERS

SECTION 1. An Employer shall cease to be an Employer under this Trust Agreement whenever:

(a) Any contribution or other payment required to be made by such Employer to or for the account of the Pension Fund shall not be paid when due, or within such time as may be specified by the Trustees; or

(b) Such Employer terminates his business and/or fails or neglects to enter into a collective bargaining agreement with the

Union providing for participation by such Employer in the Pension Fund.

SECTION 2. When, as provided in Section 1 of this Article, an Employer ceases to be an Employer hereunder, he shall have no further rights or powers under this Trust Agreement, except as hereinafter in this Article provided.

SECTION 3. An Employer who ceases to be an Employer hereunder for the reason stated in Section 1(a) of this Article, upon payment to the Trustees of all amounts then due from him, including such reasonable interest as may be demanded by the Trustees and any expenses incurred by reason of his default, may be reinstated hereunder by the Trustees, and in such event the Employees of such Employer shall again be entitled to the benefits of this Trust Agreement, subject to such conditions as may be provided therefor in the Pension Plan.

SECTION 4. An Employer who ceases to be an Employer hereunder for the reason stated in Section 1(a) of this Article shall continue to remain fully liable for all contributions and other payments required to be made hereunder. An Employer who ceases to be an Employer for the reason stated in Section 1(b) of this Article shall remain liable for all contributions due up to and including the date of termination as aforesaid in accordance with such rules and regulations as may be promulgated by the Trustees.

ARTICLE VIII.

TERMINATION OF THE TRUST

SECTION 1. This Trust Agreement and the Pension Plan may be terminated by an instrument in writing executed by all the Trustees when there is no longer in force an agreement between an Employer and the Union requiring any contributions from the Employer to the Pension Fund for the purposes hereinabove provided, except, however, that this Trust Agreement and the Pension Plan may also be sooner terminated by (a) the vote of the Executive Board of the Union, and

(b) the concurring vote of a majority of the Employers present at a regular or special meeting of the Employers called for that purpose.

SECTION 2. In the event of the termination of the Trust Agreement and the Pension Plan, the Trustees shall apply the Pension Fund to pay or to provide for the payment of any and all obligations of the Pension Fund and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purpose of the Pension Fund; provided, however, that no part of the corpus or income of said Trust Fund shall be used for or diverted to purposes other than the exclusive benefit of employees, retired employees, or the families or beneficiaries of employees or retired employees, or the administrative expenses of the Trust or the Pension Plan or for other payments in accordance with the provisions of such plan.

SECTION 3. Upon termination of the Trust Agreement and Pension Plan, the Trustees shall forthwith notify the Union and each Employer, and the insurance carrier or carriers of any policies which may be held as part of the Trust Fund, and also all other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust, and may take any action with regard to any policy or policies which may be required by the insurance carrier or carriers thereof and which the Trustees, in their discretion, may deem appropriate.

ARTICLE IX.

MISCELLANEOUS

SECTION 1. The Trustees and employees of the Pension Fund who are empowered and authorized to sign checks as provided in this Trust Agreement shall each be bonded by a duly authorized surety company in such amounts as may be determined from time to time by the Trustees. Each employee employed by the Trustees who may be engaged in handling monies of the Pension Fund shall also be bonded by a duly authorized surety company in the same manner. The cost of the premiums on such bonds shall be paid out of the Pension Fund.

SECTION 2. Each Employer shall promptly furnish to the Trustees on demand any and all records relating to his Employees which the Trustees shall require in writing. Each Employer shall also render to the Trustees with the payment of each contribution, or at such other regular intervals as the Trustees may request, such written reports relating to his Employees, including all information as to the wages paid to and hours worked by said Employees and the contributions due or payable to the Pension Fund, as the Trustees may require.

SECTION 3. The Trustees, or their authorized representatives, may examine the pertinent payroll books and records of each Employer whenever such examination may be deemed necessary or advisable by the Trustees in connection with the proper administration of the Pension Fund.

SECTION 4. No employee, or any person claiming by or through such employee by reason of having been named a beneficiary in a certificate or otherwise, shall have any right, title or interest in or to the funds or other property of the Pension Fund or any part thereof, except as specifically provided by the Trustees.

SECTION 5. No moneys, property or equity of any nature whatsoever in the Trust or Trust Fund or policies or benefits or moneys payable therefrom shall be subject in any manner, by any employee or person claiming through such employee, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien, or charge, and any attempt to cause the same to be subject thereto shall be null and void.

SECTION 6. The failure of an Employer to pay the contributions required hereunder promptly when due shall be a violation of the collective bargaining agreement between the said Employer and the Union as well as a violation of the Employer's obligations hereunder. Non-payment by an Employer of any contributions when due shall not relieve any other Employer from his obligation to make payments. In addition to any other remedies to which the parties may be entitled, an Employer in default for five working days may be required in the

discretion of the Trustees to pay such reasonable rate of interest as the Trustees may fix on the moneys due to the Trustees from the date when the payment was due to the date when payment is made, together with all expenses of collection incurred by the Trustees.

SECTION 7. All suits and proceedings to recover contributions, or any other payments due to the Trustees or the Pension Fund or to enforce or protect any other right, demand or claim on behalf of the Trustees or of the Pension Fund, may be instituted and prosecuted on behalf of the Pension Fund in its name as such, or by any two Trustees, one of whom shall be an Employer Trustee and one of whom shall be a Union Trustee, who may be thereunto authorized by the Trustees. Suits and proceedings to recover contributions due from Employers may also be instituted and prosecuted by the Union; and in the event of any recovery thereof by the Union, the amount of such recovery, less the cost and expense incurred by the Union in connection with such suit or proceeding, shall be promptly turned over to the Pension Fund by the Union.

SECTION 8. The Trustees shall have and maintain an office in the City and County of New York, which shall be deemed the situs and office of the Pension Fund. The Trustees may from time to time change the location of said office within the City and County of New York, but no change shall be effective until notice thereof shall have been given to the Union and the Employers.

SECTION 9. The address of the Union and of each of the Employers shall be that stated in this Trust Agreement, or in the collective bargaining agreement executed between each respective Employer and the Union. The address of the Union and Employer for purposes hereof may be changed by the Union or Employer, as the case may be, by written notice to the Trustees stating the new address, and such changed address shall be kept on file by the Trustees open to the inspection of each Trustee, the Union and Employers.

SECTION 10. Notices given to the Trustees, the Union, or any Employer hereunder shall, unless herein otherwise specified, be sufficient

if in writing and delivered to, or sent by postpaid first class mail or prepaid telegram to, the respective addresses thereof at his, their or its address above stated or changed as above provided. Except as herein otherwise provided, distribution or delivery of any statement or document required hereunder to be made to the Trustees, Union, or Employers shall be sufficient if delivered in person or if sent by postpaid first class mail to his, their or its respective address above stated or changed as above provided.

ARTICLE X.

CONSTRUCTION OF TRUST AGREEMENT

SECTION 1. The provisions of this Trust Agreement shall be liberally construed in order to promote and effectuate the establishment and operation of the pension program herein contemplated. The Trustees shall have power to interpret, apply and construe the provisions of this Trust Agreement, and any construction, interpretation and application adopted by the Trustees in good faith shall be binding upon the Union, the Employers and the Employees.

SECTION 2. All rules, regulations, provisions and requirements established or promulgated by the Trustees pursuant to the terms hereof shall be deemed incorporated in and made a part of this Trust Agreement and shall be binding upon the parties hereto with the same force and effect as if herein originally contained.

SECTION 3. In all litigation involving this Trust Agreement or the Pension Fund or Pension Program, this Trust Agreement and the Pension Fund and Pension Program shall be construed, regulated and administered under the laws of the State of New York. All contributions received by the Trustees hereunder shall be deemed to have been received in the State of New York; and the Trustees shall be accountable only in the State of New York.

SECTION 4. In the event that any provisions of this Trust Agreement shall be held illegal or invalid for any reason, said illegality or

invalidity shall not affect the remaining provisions of this Trust Agreement; and the provision or provisions held illegal or invalid shall be fully severable and the Trust Agreement shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

ARTICLE XI.

AMENDMENTS

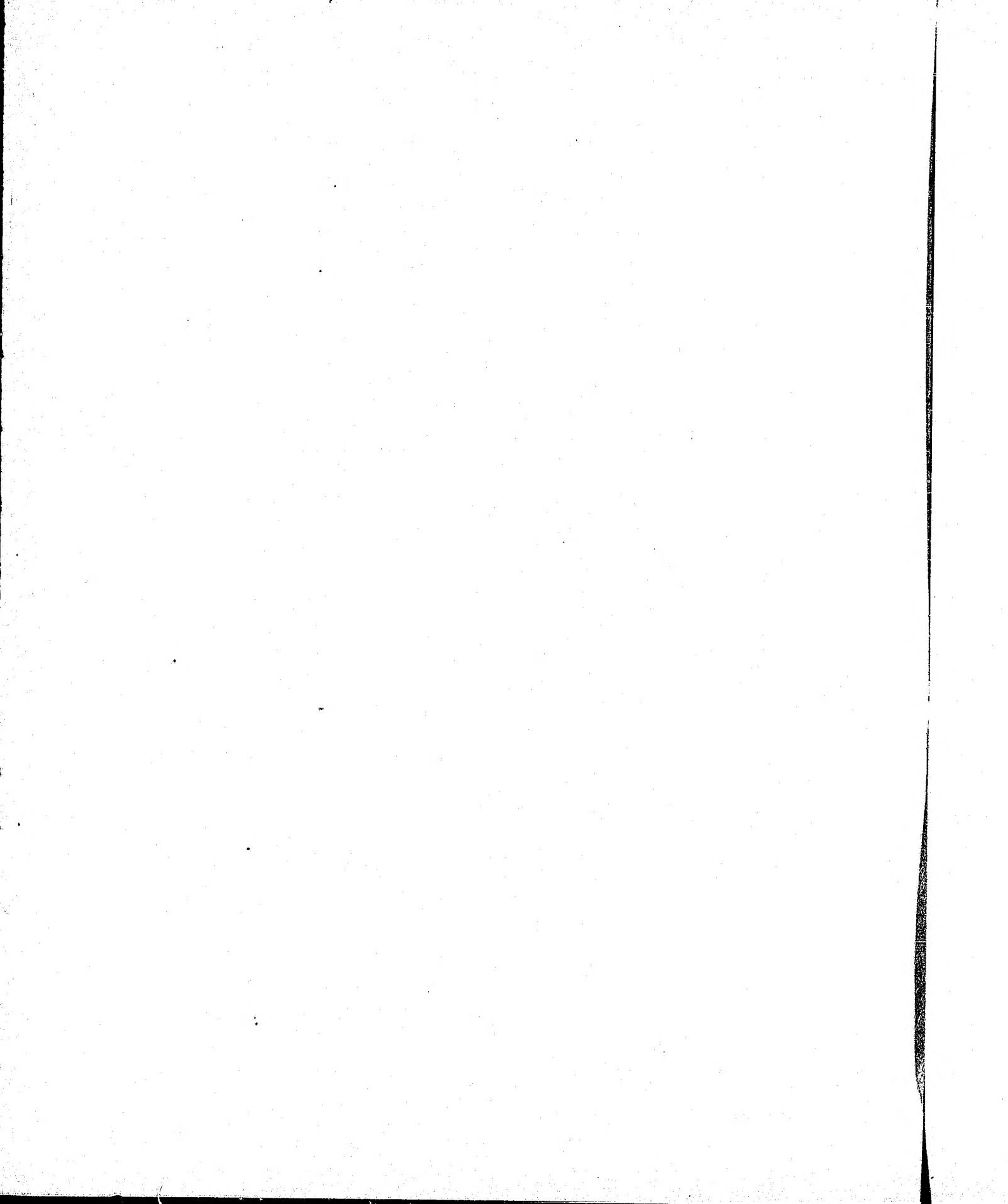
Consistent with the provisions of the collective bargaining agreements aforesaid, this Trust Agreement may be amended in any respect from time to time by the Trustees, provided that all such amendments comply with the uses, purposes and trusts herein provided and provided further that no amendment shall divert any property from the Trust Fund. Each such amendment shall be duly executed in writing by the Trustees and filed by the Trustees as part of the records and minutes of the Trustees, and a copy thereof shall be sent to the Union and the Employers. The Trustees shall have full power in their sole discretion to fix the effective date of any amendment.

ARTICLE XII.

EXECUTION OF TRUST AGREEMENT

SECTION 1. This Trust Agreement may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of his execution hereof.

SECTION 2. An Employer may become a party to this Trust Agreement by executing a counterpart hereof or by executing any other written instrument wherein he agrees to participate in the Pension Fund pursuant to the terms of this Trust Agreement.



IN WITNESS WHEREOF, the undersigned do hereunto set their hands and seals as of the date first above written.

TRUCK DRIVERS LOCAL UNION No. 807, I. B. T.
C. W. & H.

 By JOSEPH F. MANGAN (L. S.)
President

 HARRY J. THOMPSON (L. S.)
Secretary-Treasurer



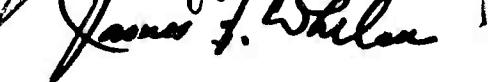
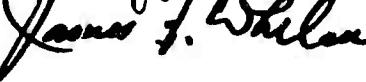

JOSEPH F. MANGAN (L. S.)
HARRY J. THOMPSON (L. S.)
WALTER O'LEARY (L. S.)

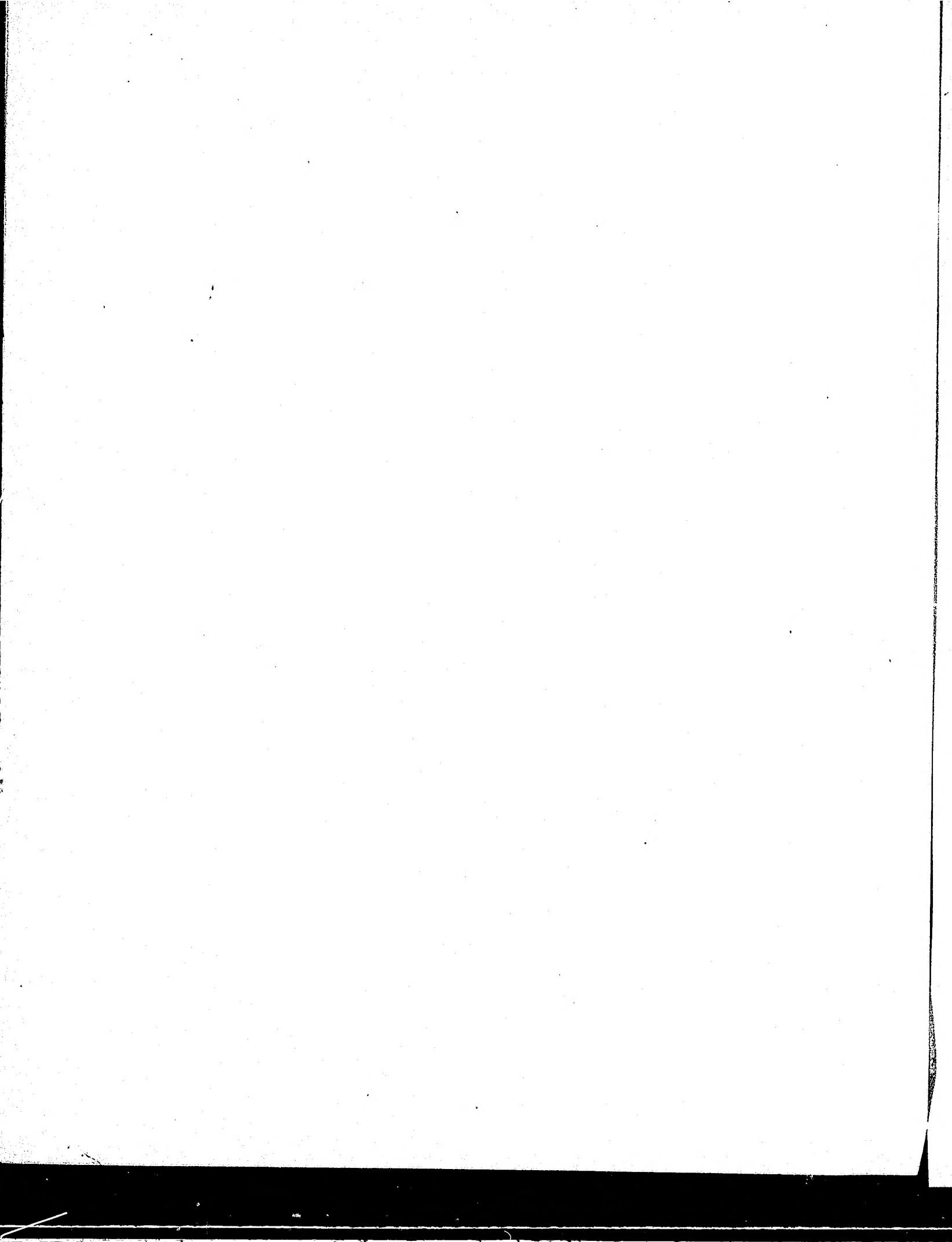
UNION TRUSTEES

JOSEPH F. MANGAN (L. S.)
HARRY J. THOMPSON (L. S.)
WALTER O'LEARY (L. S.)

EMPLOYER TRUSTEES

JOS. M. ADELIZZI (L. S.)
GEORGE V. CONBOY (L. S.)
JAMES F. WHELAN (L. S.)



General Counsel's Exhibit 7

**1967 Pension Fund Agreement
and Declaration of Trust
(Booklets Supplied)**

142a
General Counsel's Exhibit 9

SCHEDULE A

LIST OF BENEFICIARIES RECEIVING PENSION BENEFIT FOR COVERED EMPLOYMENT PRIOR TO JANUARY 1, 1937

| | <u>Union Record</u> | <u>Employer Record</u> | <u>Credits</u> |
|--|---------------------|------------------------|----------------|
| 1. Henry Wild | 10/6/28 | 12/30 | 1/1/31 |
| 2. Rosario Spinelli | 3/22/26 | 10/26 | 10/26 |
| 3. Robert Howard | 9/17/27 | 1926 | 1/1/26 |
| 4. Anthony Ubriaco | 10/25/27 | none | 1/1/26 |
| 5. Joseph Rocco | 7/14/23 | 1927 | 1/1/27 |
| 6. Adam Geis | 9/7/34 | 1926 | 9/7/34 |
| 7. Alfred King | 9/10/34 | none | 9/10/34 |
| 8. Edward DeStefano | 9/6/34 | none | 9/1/34 |
| 9. Joseph Lamorte | 10/15/36 | none | 10/15/36 |
| 10. August Vukek | * | 8/13/29 | 8/13/29 |
| 11. Gerard Caprio | 3/7/32 | none | 3/1/32 |
| 12. Herman Firman | 4/9/35 | none | 4/9/35 |
| 13. John D'Avola | 1935 | none | 1/1/35 |
| 14. Anthony Mazza | * | 1929 | 1/1/29 |
| 15. Frank Basile | 5/29/28 | 1928 | 6/19/28 |
| 16. Carmen LaRocca | * | 1/20/30 | 1/20/30 |
| 17. Jacob Cohen | 6/20/29 | 1923 | 6/20/29 |
| 18. John Sloan | 6/20/35 | 1935 | 7/1/35 |
| 19. George Daum | 7/11/36 | 1933 | 7/11/36 |
| 20. Edwin Burke | 3/12/34 | 1934 | 3/12/34 |
| 21. Peter Tracey | 1935 | 3/22/33 | 5/22/33 |
| 22. James Kelly | 7/16/35 | none | 7/16/35 |
| 23. John Connors | 10/1/34 | 1926 | 10/1/34 |
| 24. Peter Geyer | 12/14/35 | 1935 | 12/14/35 |
| 25. John Klepacki (organized 12/1/41) 12/1/41) | | 10/15/34 | 10/15/34 |
| 26. John Zelenka (organized 11/17/39) 11/17/39 | | 9/1/29 | 9/1/29 |
| 27. George Kronen | 10/16/27 | 2/11/29 | 2/11/29 |
| 28. George Krauss | 9/7/34 | 9/30 | 9/7/34 |
| 29. Stephen Zalewski | 11/4/35 | none | 11/4/35 |
| 30. Walter Maj | * | 9/12/30 | 9/13/30 |
| 31. John Woyzick | 9/7/27 | 1927 | 9/7/27 |
| 32. Patrick Thorp | ** | 7/1/22 | 7/1/22 |

* Employees of Joseph F. Whelan Co., Inc. transferred from Local 282

** Employees of Sheridan & Duncan, Inc. transferred from Local 282

SCHEDULE ESUMMARY OF INFORMATION USED BY PENSION FUND TO DETERMINE CREDITS PRIOR TO JANUARY 1, 19371. Henry Wild

A letter from Brookhattan Transportation Corp. reflecting employment began in December, 1930. The Union record showed October 6, 1928. Wild received pension credit to January 1, 1931. Retirement date was December 1, 1971.

2. Rosario Spinelli

Letter from U. S. Trucking Corp. reflecting employment began with Motor Haulage on October 26, 1926. Union record showed March 22, 1926. Spinelli's credits started October, 1926. Retirement date was January 1, 1972.

3. Robert Howard

Letter from U. S. Trucking Corp. reflecting employment began in 1926. The Union record showed 1927. Howard's pension credits started January 1, 1926. Retirement date was January 1, 1972.

4. Anthony Ubriaco

Social Security records showed that Ubriaco was working for Century Transportation from 1937 until its merger with U. S. Trucking Corp. Pension Fund received an affidavit from Joseph F. Mangan that Ubriaco was working for Century Transportation from 1926 to 1936. Union record showed October 25, 1927. Ubriaco's pension credits started October 25, 1927. Retirement date was January 1, 1972.

5. Joseph Rocco

Letter from Edward J. Thompson reflecting employment began in 1927. No verification of claimed employment back to 1923. Rocco received pension credits from January 1, 1927. Union record showed July 14, 1923. Retirement date was November 1, 1971.

6. Adam Geis

Letter from William Geis Trucking Corp. reflecting employment began in 1926. Union record shows September 7, 1934. Geis received pension credits back to September 7, 1934. Retirement date was January 1, 1972.

7. Alfred King

Claimed to be employed by R & R Motor Haulage Inc. from 1934 to 1956. R & R Motor Haulage is out of business. No verification could be obtained. Pension Fund used Union record which showed September 10, 1934. Retirement date was March 1, 1972.

8. Edward DeStefano

Employed by DeStefano Trucking Co. Went out of business in 1962. No verification possible. Used Union record which showed September 6, 1934. Retirement date was March 1, 1972.

9. Joseph Lamorte

Claimed to be employed by V. A. Maturo & Co., Inc. from 1928 to 1945. Used Union record which showed October 15, 1936 as V. A. Maturo & Co., Inc. is out of business. Retirement date was April 1, 1972.

10. August Vukek

Employer record shows date of hire to be August 13, 1929.
Retirement date was May 1, 1972.

11. Gerard Caprio

Claimed to be employed by U. S. Trucking Corp. for the period between 1932 and 1941. No record available for the period between 1932 through 1936. Affidavit from Joseph F. Mangan covering that period. Union record showed March 7, 1932. Pension credits began March 1, 1932. Retirement date was October 1, 1972.

12. Herman Firman

Claimed to be employed by Hasman & Bartz, Inc. for the period between 1929 and 1942. No records available prior to 1935. Union records showed April 9, 1935. Pension credits began April 9, 1935. Retirement date was April 1, 1972.

13. John D'Avola

Claimed to be employed by J. A. Paterson Trucking Company from 1934 to 1947. That employer is out of business. Union records showed 1935. Pension credits began January 1, 1935. Retirement date was April 1, 1972.

14. Anthony Mazza

Employer records available. Retirement date was July 1, 1972.

15. Frank Basile

Employer records available. Retirement date was November 1, 1972.

16. Carmen LaRocca

Employer records available. Retirement date was October 1, 1972.

17. Jacob Cohen

Claimed to be employed by J. Cohen & Bros. Inc. from 1923. No employer record available. Union record showed June 20, 1969. Pension credits began June 20, 1929. Retirement date was October 1, 1972.

18. John Sloan

Claimed to be employed by Elk Transportation Co., Inc. for 40 years. No employer record available. Letter from employer shows date of hire to be in 1935. Union record showed June 20, 1935. Pension credits began July 1, 1935. Retirement date was October 1, 1971.

19. George Daum

Claimed to be employed by Daniels & Kennedy, Inc. Their records do not cover the period 1933 through 1936. Union record showed July 11, 1936. Pension credits began July 11, 1936. Retirement date was November 1, 1972.

20. Edwin Burke

Claimed to be employed by Daniels & Kennedy, Inc. That employer had no records to substantiate claim that man was employed during 1934. Letter from James A. Kennedy says he was first employed during the early part of 1934. Union records showed March 12, 1934. Pension credits began March 12, 1934. Retirement date was November 1, 1972.

21. Peter Tracey*General Counsel's Exhibit 9*

1, 1973.

Employer records available. Retirement date was January

22. James Kelly

Claimed to have been employed by J. M. Walker & Son from 1932 to 1937. That employer is out of business. Union record showed July 16, 1935. Pension credits began July 16, 1935. Retirement date was January 1, 1973.

23. John Connors

Claimed to have been employed by Conboy Trucking Corp. back to 1926. No employer record available. Union record showed October 1, 1934. Pension credits began October 1, 1934. Retirement date was March 1, 1973.

24. Peter Geyer

Claimed to be employed by Elk Transportation Co., Inc. from July 30, 1933. No employer record available. Letter from employer showed date of hire to be 1935. Union record showed December 14, 1935. Pension credits began December 14, 1935. Retirement date was February 1, 1973.

25. John Klepacki

1, 1971. Employer records available. Retirement date was October

26. John Zelenka

1, 1972. Employer record available. Retirement date was October

27. George Kronen

Employed by Harry Pape, Inc. The employer record shows date of hire to be February 11, 1929. Union records show October 16, 1927. Received credits as of February 11, 1929. Retirement date was January 1, 1972.

28. George Krauss

Claimed to be employed by The Geeham Trucking Company, Inc. No employer records available. Letter states date of hire to be September, 1930. Union record shows September 7, 1934. Pension credits as of September 7, 1934. Retirement date was February 1, 1972.

29. Stephen Zalewski

Claimed to have been employed by L. T. Stevenson Co., Inc. Employer out of business. Union record shows initiation date to be November 4, 1935. Pension credits began November 4, 1935. Retirement date was April 1, 1972.

30. Walter Maj

1, 1972. Employer records available. Retirement date was March

31. John Woyzick

Claimed to be employed by Elk Transportation. No employer record available. Employer letter states 1927. Union record shows September 7, 1927. Pension credits began September 7, 1927.. Retirement date was March 1, 1973.

32. Patrick Thorp

Employer records available from Sheridan & Duncan, Inc. to 1934. Prior to 1934 an affidavit of Hugh E. Sheridan to 1922. Pension credits began July 1, 1922. Retirement date was October 1, 1971

Respondent's Exhibit 1
PENSION FUND OF THE N.Y.C. TRUCKING INDUSTRY - LOCAL 807

32-43 49th Street
 Long Island City, New York 11103
 Telephone 274-5353

PENSION APPLICATION

Please read all instructions carefully and print answers to all questions.

| | | | | | | |
|---|---------------------------|----------|----------------|--|---------|--|
| 1. Name..... | Last | First | Middle | | | |
| 2. Address..... | (Number) | (Street) | (City or Town) | (Zone) | (State) | |
| 2A. Phone No..... | | | | | | |
| 3. Social Security Number..... | 4. Union Book Number..... | | | | | |
| 5. Date you retired or plan to retire..... | Month | Day | Year | | | |
| 6. Date of Birth..... | Month | Day | Year | (Attach proof of age. See Instructions.) | | |
| 7. Place of Birth..... | City | Country | | | | |
| 8. (a) When did you first join Local 807?..... | Month | Year | | | | |
| (b) Since you joined Local 807, have there been any periods when you dropped out or withdrew from membership, or were transferred out? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | | |
| If "yes" state when: From..... To | | | | | | |
| From..... To | | | | | | |
| From..... To | | | | | | |
| (c) Were you a member of any other Teamster Local before joining Local 807? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | | | | |
| If "yes" state: Local #..... From..... To | | | | | | |
| Local #..... From..... To | | | | | | |
| Local #..... From..... To | | | | | | |
| 9. (a) Did you work for employers under contract with Local 807 between September 1, 1950 and March 1, 1954? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | | | | | |
| (b) Have you worked for employers under contract with any other Teamster Locals since September 1, 1950? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | | | | | |
| If yes, Local #..... | | | | | | |
| If "yes" state: Local #..... From..... To | | | | | | |
| Local #..... From..... To | | | | | | |

10. You may be entitled to credit for time not actually spent in covered employment due to time spent in the United States Armed Forces. If you have served in the Armed Forces, fill in this section and attach a photostatic copy of your discharge or separation papers.

| Date Entered Armed Forces | Date Discharged or Separated | Branch of Service |
|---------------------------|------------------------------|-------------------|
| | | |

11. You may be entitled to credit for periods when you were receiving accident and sickness benefits from the Welfare Fund. List any such periods below.

| | | | | | | |
|------------------|-------|------|-------|------|-------|------|
| Period disabled: | From | To | Month | Year | Month | Year |
| | Month | Year | Month | Year | Month | Year |
| | From | To | Month | Year | Month | Year |
| | Month | Year | Month | Year | Month | Year |

12. Have you ever received Workmen's Compensation benefits? Yes No
If yes, please list below the period to time for which you received Workman's Compensation.

| NAME OF EMPLOYER FOR WHOM YOU WERE WORKING | ADDRESS OF EMPLOYER | From Month Year | To Month Year |
|--|---------------------|--------------------|------------------|
| | | | |
| | | | |
| | | | |
| | | | |

13. Have you ever been employed as a full-time officer or employee of the Union or of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers. Yes No

If yes, list below:

Local Number or International _____

| | | | | | |
|------|-------|------|----|-------|------|
| From | Month | Year | To | Month | Year |
|------|-------|------|----|-------|------|

14. Are you at the present time an owner or officer of your current employer?

Yes

Respondent's Exhibit 1

- (c) List as accurately as possible the names and addresses of all employers in the Trucking Industry for whom you have ever worked. Show dates of employment as exactly as possible. Start with your present or most recent employer first and continue in that order. Attach a separate sheet if more space is needed.

I hereby apply for a pension from the Pension Fund of the N.Y.C. Trucking Industry—Local 807. The above statements are true to the best of my knowledge and belief. I understand that a false statement may disqualify me for pension benefits.

.....
Signature

Yr.
.....

.....
Type of Pension Desired

.....
Date

15. If your retirement is effective before having reached age 65 please explain below why you decided to retire; and the type of employment, if any, you will seek upon retirement.

An application for pension must be made on an official form of the Pension Fund and must be submitted to the Pension Fund.

Applications must be submitted at least three months before the date when pension payments might begin.

When you submit your application you will receive a receipt letter. You will be contacted if any further information is required. You will be notified in writing of the decision on your application.

INSTRUCTIONS TO APPLICANT FOR RETIREMENT ON PROOF OF AGE

One of the types of proof of age listed below must be furnished. Proof as high in order on the list as possible should be submitted if you have it, or if it is readily obtainable, because such proof is generally more convincing. For instance, if you have or can readily obtain a birth certificate, it should be submitted rather than a baptismal certificate or a statement of birth shown by a church record. If you do not have either of these proofs, or they are not readily obtainable, try to submit the proof listed next in order, rather than one low on the list. Additional proof of age may be requested if the document which you submit is not convincing proof. Therefore, it is to your advantage to furnish a document which is high in order of preference on the list. You must attach a photostatic copy of the proof of age to your application. However, you are cautioned that Naturalization Papers, United States passports, and Immigration Papers may not be photostated. If any of these is the only proof of age you have, submit the original and it will be returned.

1. A birth certificate.
2. A baptismal certificate or a statement as to the date of birth shown by a church record, certified by the custodian of such record.
3. Notification of registration of birth in a public registry of vital statistics.
4. Certification of record of age by the U.S. Census Bureau.
5. Hospital birth record, certified by the custodian of such record.
6. Document showing approval of Social Security Pension.
7. A foreign church or government record.
8. A signed statement by the physician or midwife who was in attendance at birth, as to the date of birth shown on their records.
9. Naturalization record. (Photostat not permitted; submit original).
10. Immigration papers. (Photostat not permitted; submit original).
11. Military record.
12. Passport. (U. S. Passports may not be photostated; submit original).
13. School record, certified by the custodian of such record.
14. Vaccination record, certified by the custodian of such record.
15. An insurance policy which shows the age or date of birth.
16. Marriage records showing date of birth or age (application for marriage license or church record, certified by the custodian of such record; or marriage certificate).
17. Other evidence, such as signed statements from persons who have knowledge of the date of birth, voting records, poll-tax receipts, driver's license, etc.

151a
Respondent's Exhibit 2

AUTHORIZATION TO OBTAIN EARNINGS DATA FROM THE SOCIAL SECURITY ADMINISTRATION

JOB NO. _____

NAME _____ SOCIAL SECURITY NO. _____

DATE OF BIRTH _____

Social Security Administration
Box 57
Baltimore, Maryland 21203

Please furnish the New York City Trucking Industry - Local 807 Union Pension and Health Funds, 32-43 49th Street, Long Island City, New York 11103, an itemized statement of all quarterly and annual amounts of wages reported to my record for the periods specified by that organization, and the identification numbers, names and addresses of the reporting employers.

Date Signed

Signature of Social Security Number Holder

TO BE FILLED IN BY PENSION FUND OFFICIAL ONLY

SOCIAL SECURITY ADMINISTRATION:

Please furnish the above information for the period _____ through _____. This information is to be used only to determine initial eligibility for benefits.

Countersignature of Pension Fund Official

152a
Respondent's Exhibit 3

WELFARE AND PENSION FUNDS



OF THE NYC TRUCKING INDUSTRY

LOCAL 807

32-43 49TH STREET • LONG ISLAND CITY, NEW YORK 11102 • TEL. 274-5253

Union Trustees:

Joseph F. Mangan
Ray Rebholz
Sal De France
Jim O'Rourke

Impartial Chairman:

Hugh E. Sheridan

Employer Trustees:

Frank Scotto
James F. Whelan
William W. Marin
Joseph F. Adams

I, _____, do hereby state that I am going
to retire on _____.

Very truly yours,

STATE OF _____ }
COUNTY OF _____ } SS.

(Notary Public)

Respondent's Exhibit 4
PENSION FUND OF THE N.Y.C. TRUCKING INDUSTRY - LOCAL 807

32-43 49th Street

Long Island City, New York 11103

Telephone 274-5353

Retirement Declaration

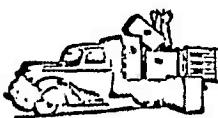
Name..... Social Security No.....

In retiring on a pension from the Pension Fund of the N.Y.C. Trucking Industry - Local 807, I declare that I will be bound by all the rules and regulations of the Pension Plan.

1. (a) Retirement under this Plan for employees who are age 55 or over on the last day of the last quarter for which they earn Pension Credits and for employees who retire on a Disability Pension shall mean complete withdrawal from any similar employment in the industry within which he was employed at the time of his retirement or from any employment covered by a collective bargaining agreement with Local 807 or of any other Local Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers or from employment as a salaried employee of the Pension Fund of the New York City Trucking Industry - Local 807.
(b) Retirement on a pension other than a Disability Pension under this Plan for employees who are under age 55 on the last quarter for which they earn Pension Credits shall mean complete withdrawal from any employment in the industry within which he was employed at the time of retirement or from any employment with any employer who has a collective bargaining agreement with Local 807 or with any other Local Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers or from any employment as a salaried employee of the Pension Fund of the New York City Trucking Industry - Local 807 and complete withdrawal from the trucking industry.
2. If I engage in any such employment, I will notify the Trustees of the Pension Plan by registered mail, within 15 days after starting such employment.
3. I recognize that if I work in violation of the Pension Plan after the date of my retirement, then my pension benefits will be suspended in accordance with the provisions of the Pension Plan.
4. I recognize that I must personally endorse each pension check.
5. If you are going to be employed after your retirement, what type of work will you be doing?
Answer on reverse side.

Date..... Signed.....

HEALTH AND PENSION FUNDS



OF THE NYC TRUCKING INDUSTRY

LOCAL 807

32-43 49th STREET • LONG ISLAND CITY, NEW YORK 11103 • TEL. 274-5353

Union Trustees:

Joseph F. Manga
Raymond C. Rubelis
Sal De Franco
Jim O'Rourke

Impartial Chairman:

Hugh E. Sheridan

Employer Trustees:

Frank Scotto
James F. Whalen
William W. Marin
Joseph F. Adams

Gentlemen:

This is to advise you that the above named has submitted a Pension application to our office giving as his effective date of retirement.....

Before we can process this application any further we would like to have the following information:

1. When did Mr. start to work for you?
2. What type of work did he perform?
3. Were there any breaks in his service while in your employ?
4. What was or will be his last day of employment?

We would appreciate receiving a reply to the above on your letter head and signed by an authorized official of your company.

Very truly yours,

PJF:

Respondent's Exhibit 6

PENSION FUND OF THE N.Y.C. TRUCKING INDUSTRY - LOCAL 807

From: Fund Office

To: Local 807

We are in receipt of a pension application from:

Name _____ Social Security No. _____
Local 816 - 641 - 282 - 560 - 617 - 707
Union Book No. _____

Please supply data as requested below:

By: _____
Administrator

From: Local 807

To: Fund Office

Listed below is data requested as it appears on our records.

Date of Birth _____ Date Joined Local 807 _____

Member of Local 807: From _____ To _____

From _____ To _____

Comments: _____

Signed _____

Title _____

Date _____

**Decision of Administrative Law Judge
Benjamin A. Theeman**

[1]

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIVISION OF JUDGES

WASHINGTON, D. C.

[CAPTION OMITTED]

[APPEARANCES OMITTED]

[2]

DECISION

Statement of the Case

BENJAMIN A. THEEMAN, Administrative Law Judge: The complaint alleged that Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Teamsters) from February 28, 1972 violated Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, etc. (the Act) by being a party to and maintaining a Pension Fund containing as one of its Rules and Regulations a certain Article III, Section 2(a) under whose terms with regard to the accumulation of pension credits a preference was accorded to employees who were members of the Teamsters prior to January 1, 1937 over employees who were not members of the Teamsters prior to January 1, 1937.

The Teamsters denied the commission of the unfair labor practices. In addition, the Teamsters raised three affirmative defenses: (1) The complaint is not supported by any

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Benjamin A. Theeman*

charge and has been issued by the Regional Director for Region 29 on his own motion in violation of Section 10(b) of the Act. (2) The alleged preference in Article III Section 2(a) stated above does not violate the Act because it cannot be considered discriminatory in regard to hire, tenure or any term or condition of employment to encourage or discourage membership, nor to restrain or coerce employees in the exercise of Section 7 rights under the Act. (3) Article III, 2(a) provides for no presumption favoring membership in the Teamsters and thus is not violative of the Act. These affirmative defenses are dealt with in Section III below.

Pursuant to notice, a hearing in this case was held in Brooklyn, New York on April 30 and May 1, 1973. The General Counsel, the Teamsters and the Party in Interest appeared and were represented by Counsel.¹ They were given full opportunity to participate, adduce evidence, examine and cross-examine witnesses, and present oral argument. These parties have submitted briefs that have been read and considered.

Upon the entire record, and from my observation of the witnesses, I make the following:

Findings of Fact

I. Business of White Rock

At all material times (1) White Rock Beverages Inc. is a Delaware corporation and a wholly owned subsidiary of White Rock Corporation. (2) White Rock Beverages Inc.

¹ As shown below, the Regional Director refused to issue complaints on the alleged violations dealing with Lightfoot, Palumbo and Greco.

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[3] and White Rock Corporation (together referred to herein as White Rock) are affiliated businesses with common officers, directors and operators and constitute a single integrated business enterprise. (3) The directors and operators of White Rock formulate and administer a common labor policy affecting the employees. (4) White Rock Corporation has maintained its principal office and sole plant in Boston, Massachusetts, where it is engaged in the manufacture, sale and distribution of beverages and related products. (5) During the year 1972 (a representative year) White Rock Corporation in the course and conduct of its business operations, manufactured, sold and distributed at its Boston place of business, products valued in excess of \$500,000, of which products valued in excess of \$50,000 were shipped in interstate commerce to other states than Massachusetts.

It is found, as admitted, that White Rock is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Union

It is found, as admitted, that Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the Teamsters) is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. *The Issues*

The issues are sufficiently set forth in the Statement of Facts above.

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**B. The Filed Charges Adequately Supported
The Complaint**

Three similar charges were filed in this case on October 1972 by Lightfoot, Palmubo and Greco. Each stated:

Since on or about February 19, 1972, and continuing to date, the above named labor organization by its officers, agents and representatives has maintained in effect an employer-financed pension plan for employees of WHITE ROCK BEVERAGE COMPANY, which provided, *inter alia* that benefits shall be based upon length of membership within the union, and has denied benefits to Tony Greco because he did not have a sufficient period of time as a union member.

By these and other acts, the above-named labor organization has restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act.

[4]

By similar letters dated December 15, 1972, the Regional Director (Region 29) notified each of the individuals of his refusal to issue a complaint on the charge. The letter stated:

The investigation failed to establish that you have been unlawfully denied pension credits for service with White Rock Beverage Company because you were not a member of Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Rather, the evidence tends to show that pursuant to the Pension Plan's rules and regulations you have been denied past

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service pension credits for the period you were not in the unit of employees covered by the collective bargaining agreement between your employer and Local 807, *Nu-Car Carriers, Inc.*, 187 NLRB No. 117. I am, therefore, refusing to issue a complaint insofar as your charge alleges that you have been unlawfully denied benefits under the Pension Plan because you were not a Local 807 member. The remaining portions of your charge are being processed further.

The three individuals appealed the Regional Director's ruling to the General Counsel of the Board. On January 26, 1973, each appeal was denied.²

[5]

In their answer, at the hearing and in their brief, the Teamsters and the Party in Interest moved to dismiss the

² The denial letters were identical:

Your appeal in the above matter has been duly considered. The appeal is denied substantially for the reasons set forth in the Regional Director's letter of December 15, 1972. The only discovered instances of employees' having received pension credit for time during which they were not covered under a Union collective bargaining agreement could not be shown to have been based on any considerations other than clerical error which the Union has been trying to correct.

* * * * *

Appeal from refusal to issue complaint¹ based on a 8(b)(1)(A) charge filed on October 19, 1972, by George R. Lightfoot, an individual alleging that certain provisions in the pension fund agreement between the Company and the Union are discriminatory on their face and that Lightfoot was denied benefits on the basis of his prior lack of union membership in the union.

¹ The Region has found merit to the 8(b)(1)(A) allegations that certain provisions in the pension fund agreement are illegal, however, it refused to issue complaint alleging that the denial of benefits was unlawfully motivated.

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complaint upon the basis that the refusal to issue complaint on the specific denial of benefits to the named employees left no charge to support the complaint in that the alleged violation in the complaint had no relationship to the alleged violation in the charge; that Section 10(b) of the Act states clearly that without a charge, the Board has no basis for proceeding. The General Counsel asserts that the language in each charge "By these and other acts, the above named labor-organization has restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act," supports the issuance of the complaint. There is merit to the General Counsel's position. The motion to dismiss based on the inadequacy of the charge is denied.³

The three charges stated that the Teamsters since February 19, 1972 and thereafter restrained and coerced employees because it "has maintained in effect an employer financed pension plan for employees of White Rock Beverage Company, which provided that benefits shall be based upon length of membership within the union . . ." The complaint herein in paragraph 10 alleges that "a preference is accorded in accumulating pension credits to employees who were members of Respondent prior to January 1, 1937 over employees who were not or did not become, members of Respondent prior to January 1, 1937."

³ Further, it is noted that the Teamsters and the Party in Interest were given notice that further proceedings were contemplated. The Regional Director's letter refusing to issue complaint contained the sentence "The remaining portions of your charge are being processed further." The letter denying the appeal stated that Section 8(b)(1)(A) violations were being processed based on illegal provisions of the pension fund agreement.

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By examination it can be seen that the violation of the complaint allegation is not far removed from but is of the same class as the specific allegation in the complaint. Both refer to a preference to union members based on union membership. *Southern Materials Company, Inc.*, etc., 181 NLRB 958 fn. 1. Thus, there appears little doubt that the action referred to in the complaint allegation is sufficiently "closely related" ⁴ to the specific charge allegations as to come within the scope of the "By these and other acts" language of the charge. Under such circumstances it cannot be said that the Regional Director has issued a complaint on his own initiative as he is forbidden to do by Section 10(b) of the Act. *Great Plains Steel Corp.*, 183 NLRB No. 96 and cases cited therein.⁵

⁴ See *Prineo Pontiac Inc.*, 174 NLRB 919, 921; *Champion Pneumatic Machinery Co.*, 152 NLRB 300, 303.

⁵ *Great Plains* quotes from *Texas Industries Inc. v. N.L.R.B.*, 336 F. 2d 128, 132 (C. A. 5, 1964). That quotation is particularly apt here:

It is established that this section [10(b)] precludes the Board from issuing a complaint on its own initiative, and that a charge is a prerequisite to the institution of proceedings before the Board However, the charge is not a formal pleading, and its function is not to give notice to the respondent of the exact nature of the charges against him This is the function of the complaint. The charge rather, serves merely to set in motion the investigatory machinery of the Board. It is largely for the benefit of the Board, not the respondent, so that it may intelligently determine whether and to what extent an investigation is warranted. Consequently, the Board has considerable leeway to found a complaint on events other than those specifically set forth in the charge, the only limitation being that the Board may not get "so completely outside . . . the charge that it may be said to be initiating the proceeding on its own motion . . ." (Citations omitted.)

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Benjamin A. Theeman*

[6]

C. *Pension Fund of the NYC Trucking
Industry Local 807*

1. Salient Features of the Fund

By an Agreement and Declaration of Trust dated December 1, 1950, Local 807 and certain employer associations and individual employers established the Pension Fund of the N.Y.C. Trucking Industry—Local 807 for the benefit of employees covered by collective bargaining agreements between the employers and the Union. The terms and conditions were fully set forth in the agreements and Rules and Regulations established for the Pension Plan. An employer under the terms of its collective bargaining agreement with the Teamsters made contributions to the Pension Fund on behalf of his employees.⁶

The Pension Fund is administered by a Board of eight trustees; four are Union Trustees and four are Employer Trustees. Each group votes as a unit and in the event of a dispute the Trust provides that the matter shall be submitted to an impartial arbitrator for determination.

2. The Challenged Language

This proceeding deals with Article III Sections 1 and 2(a) of the Pension Fund's Rules and Regulations, which were incorporated into the Rules by an amendment dated February 28, 1972 effective the same day. The new Article III Sections 1 and 2(a) read as follows:

⁶ Since about November 1, 1971, and pursuant to a collective bargaining agreement with the Teamsters, White Rock has been making contributions to the Pension Fund for its employees.

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Section 1. PENSION CREDITS GENERALLY. Entitlement to a pension under this Plan is determined in part on the accumulation of Pension Credits. Pension Credits are granted on the basis of employment covered by the Pension Fund. Credits are granted in quarter-year units. A Pension Quarter is defined as any period of three consecutive months starting August 1st, November 1st, February 1st or May 1st. A year of Pension Credits consists of any four quarters of Pension Credit.

[7]

Pension Credits shall be granted only as set forth in this Article.

There are two bases for securing Pension Credits for the period before September 1, 1950 and another basis for accumulating Pension Credits for the period on and after September 1, 1950. For the latter period, it is purely a question of a certain minimum amount of work in Covered Employment.

Section 2. PAST SERVICE.

- (a) It is recognized that it would be difficult for many, if not most, of the Employees to establish their periods of Covered Employment prior to January 1, 1937. Consequently, anyone who was a member of Local 807 prior to the period commencing January 1, 1937 may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 807 during this period. For this purpose, a Pension Quarter shall be credited if the Employee was a member for any part of the quarter. Pension Credit

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shall also be granted for any period of time that an employee can prove that he worked in covered employment through employer records.

3. Conclusion that the Language is
Violative of the Act

Section 2(a) as written recognizes that applicants for pension credits may have difficulty in proving covered employment for the period prior to January 1, 1937.⁷ Section 2(a) in effect separates pre 1937 applicants into two classes (1) members of the Union prior to January 1, 1937 (2) non-members of the Union prior to January 1, 1937. As written Section 2(a) grants two advantages to the Union member employee over the nonunion-member employee: (1) it increases the probabilities of a Union member to get pension credits; (2) it increases the burden of proof of the non-union-member.

These advantages are shown by the following example which reduces the language of Section 2(a) to the simplest possible situation. During the year 1934 to 1937 two applicants were employed by Employer X and Employer Y respectively. Applicant one was a union member. Applicant two was nonunion. Employer X and Y and their records are no longer existent. No other confirmation or record concerning covered employment is available than the statement by each applicant of his employment. Section 2(a) is applicable to such a set of facts. It provides that under such circumstances, ". . . anyone who was a member of Local 807 prior to the period commencing January 1, 1937

⁷ Caused by the absence of Social Security records.

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[8] may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 807 during this period." It is reasonable to conclude that absent other facts the Trustees will exercise their discretion in favor of granting the pension credits to the union member.⁸ But regardless of what occurred or might occur in practice, and looking only to the language itself as written it is clear that a union member's probabilities of receiving pre 1937 pension credits are greater than those of a non-union member. For under its terms the union member is in a position to receive pension credits where a nonunion member may not. Under the terms of the Pension Fund the pre 1937 credits are worth at least \$10 a month additional for each year of pension credit. This payment is not considered insubstantial and an arrangement wherein only union members receive this advantage is also not insubstantial. Between the union and nonunion members under such circumstances, the language of Section 2(a) makes that value available only to Teamster members.

As written Section 2(a) sets up two unequal standards of proof of covered employment. Under the given situation the union member is in a position to rely on his union membership to support his application. The nonunion member cannot do so. Lacking this support the nonunion member is required to exercise extraordinary efforts to obtain confirmatory proof. It follows that the nonunion member's burden of proving his claim is heavier than the union members. Certainly this distinction creates an advantage for

⁸ Scotto an Employer Trustee of the Fund testified " . . . there's a presumption there that if he's a union member, there would be covered employment."

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the union member, for, as the Board said on page 851 in *Nu-Car Carriers, Inc.*, 187 NLRB 850 review denied 455 F. 2d 615 (C. A. 3, 1972), "We do not, however, minimize the burden of proof imposed on non-members." To the extent of an easier burden of proof the union member was given an advantage over the nonunion member because of his union membership. To that extent also Section 2(a) discriminated against nonunion members.⁹ It is noted that in *Nu-Car Carriers*, the Pension Fund provided that pension credits were granted to union members by establishing for the latter the presumption that union membership was evidence that they had worked under covered employment. Therein, no such presumption was given to nonunion employees. The Board said at page 851, "By dispensing with proof of past employment history for members, members receive an advantage: nonmembers being denied the advantage suffer discrimination (Cases cited)." Unlike *Nu-Car*, the language in Section 2(a) does not create a "presumption" in favor of a union member that he may exercise as a matter of right but it does nevertheless establish a discriminatory advantage in favor of union members and against nonunion members. Such an advantage based on union membership is violative of the Act, even though it does not achieve the status of a presumption.¹⁰

[9] As stated below, the Trustees acted favorably upon 32 applications for pension credits under Section 2(a). The evidence presented does not show that in doing so the Trus-

⁹ Cf. *Nu-Car Carriers, Inc.*, *supra*, wherein the Board found a provision of the Pension Fund violative of the Act as written.

¹⁰ Under these circumstances, the Teamsters' third defense fails. See Statement of the Case above.

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tees carried out Section 2(a) so as to discriminate against nonunion employees.¹¹ Such non-discriminatory administration does not dissipate the inherent impropriety of Section 2(a). As was stated in the concurring opinion in *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. N.L.R.B.*, 365 U.S. at page 678:

The mere existence of a clause that on its face appears to declare preferential rights for union members encourages union membership among employees or job applicants, persons not privy to the undisclosed intent of the parties, yet affected by the apparent meaning of the contract. Hence the mere possibility that such a clause may actually turn out not to have been administered by the parties so as to favor union members is not enough to save it from condemnation as an unlawful discrimination.

The favorable probabilities and advantages for union members found above arose out of the terms and conditions of the collective bargaining agreements between the Teamsters and employer contributors to the Pension Fund.¹² Thus, they are a condition of employment affecting the employees of the trucking industry. To the extent that these conditions advantage union members and disadvantage nonunion members they do violence to the purposes of the Act. Accordingly, it is found that the language of Article III Section 2(a) as written violates Section 8(b) (1)(A) and (2) and Section 8(a)(3) and (1) of the Act.

¹¹ See the following section of this Decision.

¹² One of whom is White Rock Beverage.

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Cf. *Nu-Car Carriers*, *supra*, at page 851 and 861 and cases cited therein.

D. Article III Section 2(a) in Operation

1. The General Counsel takes the Position
That the Operation of the Fund is
Discriminatory

The General Counsel rested after putting in his proof to show that Article III Section 2(a) was violative *per se* of the Act. The Teamsters and the Party in Interest then placed in evidence the practices and procedures of the Pension Fund in handling applications for pre 1937 Pension Credits to show that the Fund handled all applicants and applications without discrimination and therefore the language of the agreement was not violative of the Act. On the basis of the record evidence the General Counsel in his closing statement and brief, took the position that the administration of Article III Section 2(a) by the Teamsters was also violative of the Act.¹³ The record as a whole does not support the General Counsel's position.

¹³ The original complaint herein does not allege that the administration of Section 2(a) was violative of the Act. To the extent that it alleges that Section 2(a) is *per se* violative, it is broad enough to place in issue an allegation that as administered the Fund was also violative of the Act. In any event, the Teamsters voluntarily introduced the facts upon which the General Counsel's allegation is based, the matter was fully litigated at the hearing and is included in Point II of the Teamsters' brief. Cf. *Gust K. Newberg Construction Company*, 174 NLRB 1108, 1110 fn. 12. See also, *Local 146, Sheet Metal Workers*, etc., 203 NLRB No. 168, fn. 1, wherein an allegation in an amended charge was not included as an allegation in the complaint and was not considered in issue by the Administrative Law Judge. The Board however, decided the issue because "there was litigation of it."

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2. Practice and Procedure

The determination of pension credits was a two step process.¹⁴ The first was the collection of data. The second was the Trustees' decision.

The collection of data was performed by the Funds' administrative staff¹⁵ and was commenced by the applicant filing an application for pension credits. Each applicant filed a standard application form which included an authorization to obtain earnings data from Social Security and a list of "all employers in the Trucking Industry for whom" the applicant ever worked. No time limit was specified. The applicant was asked to start with his "present or most recent employer first" and continue in that order. He was asked to use separate sheets of paper "if more space is needed."

A major problem for the Fund was the determination of periods of covered employment¹⁶ for the pre 1937 period.

¹⁴ The procedures were standard for all applications whether for pension credits for employment prior to January 1, 1937 or after that date.

¹⁵ An applicant was not required to make an independent investigation to prove covered employment.

¹⁶ Covered employment prior to January 1, 1937 according to Article III was defined as:

Periods of employment, even before coverage by a Local 807 contract, by an employer which participated in the Pension Fund on September 1, 1950, shall also be credited, provided that it was employment in a category of work (such as a driver, helper, etc.) which is covered by Local 807 agreements.

Covered employment was interpreted in the Funds' Booklet of Questions and Answers as follows:

For the period before September 1, 1950 [covered employment] . . . may also include work not covered by a Local 807 contract

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[11] As stated in Section C above, the problem was made more difficult because of the absence of Social Security records.¹⁷ After all the information available had been collated, the Fund analyzed the data, placed the analysis in the applicant's folder and the entire folder was forwarded to the Trustees for their determination. This procedure occurred whether the application was supported by employer records or not. The Assistant Administrator stated that the Fund did not take the employer's record for granted. The union records¹⁸ were useful to validate the employer's records to achieve the Fund's sum of checks and balances and "to make sure the information that the man was giving us was true." The Assistant Administrator continued:

This is one of the ways that we have of checking it.

In other words, if the union records show that the company had a contract, that this man was in fact listed on their seniority list at that time and that he was a member, I mean these things show us that we're on the right track and that the man would qualify for credit during that period of time. But again, we would

provided it was a job for which Local 807 bargains and the employer participated in the plan on September 1, 1950.

¹⁷ With regard to applications for post 1937 credits that data collected included Social Security and union records. According to the Assistant Administrator of the Fund a combination of at least these two showed the various companies the employee worked for, whether each company had a contract, the seniority listing of the employee, and the type of work he was doing. The Assistant Administrator called the result a "sum of checks and balances." The union records were considered essential to a determination of Pension Credits. See also fn. 30.

¹⁸ According to the Assistant Administrator, union records meant contracts, seniority lists and initiation date into union membership.

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put it on the analysis sheet and then submit it to the trustees for final determination.

The Trustees reviewed each application individually. In making their determination they considered all the data contained in the applicants' file. In certain cases, oral testimony was considered to supplement the documental evidence. There were available people who had been in the trucking industry since 1925 who had personal knowledge of events, people and employment prior to 1937. Some of the Trustees of the Fund were in that category. Their testimony in connection with certain applications for pre 1937 credits became part of the evidence used by the Trustees.

Scotto an Employer Trustee detailed the procedure the Trustees went through generally in making their determination. As an example of the use of oral testimony he referred to applicant Caprio. When his case was being considered, Mangan, President of the Teamsters and one of the Trustees was present. Mangan was formerly employed by the U.S. Trucking Corp. Mangan confirmed from his personal knowledge that Caprio had been employed by U.S. Trucking prior to 1937 though that company had no record of the same. As Scotto put it:

[12] For example, [Joe Mangan] happened to be the steward on the U.S. job. Absent all other documents, absent every other type of evidence that we could find, Mr. Mangan came forward in his capacity as steward at that time who could tell us yes, I worked with this man, he was on the job, he was there in covered employment, I was present at the same time.

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Mangan testified with regard to applicant Ubrieo also. It is noted that in both cases an affidavit was obtained from Mangan and included in each man's file. Other than these two applications, the record does not show that other applicant's files were supplemented by oral testimony.¹⁹

Received in evidence without objection was a summary and analysis of the action taken by the Trustees with regard to the 32 pre 1937 applications. The parties stipulated that the summary prepared by the Assistant Administrator listed the data contained in each applicant's file. The stipulation also stated that summary did not contain everything that was considered by the Trustees in deciding each application. Also received in evidence were union records of the 32 applicants containing data used by the Assistant Administrator in compiling the applicant's file.²⁰ The parties in their briefs and argument deal with individual files and the evidence contained in the record for each individual. Of course, the record evidence is the basis for the final determination herein that there was no violation of the Act in the administration of the Fund.

3. Analysis and Conclusions

a. *Introduction*

The General Counsel to support the allegation of discrimination refers to six applications (King, De Stefano,

¹⁹ Scotto was the only Trustee who testified. He stated that minutes were kept by the Trustees of the action taken on each decision; that without these minutes he was unable to state whether he was present when a particular application was decided.

²⁰ No applicant's complete file was placed in evidence, nor does the record contain a clear statement of the actual data used by the Trustees in connection with each application.

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Sloan, Burke, Geyer and Woyzick). He claims the initiation date played a significant role in the determination of the pension credits.²¹ He also refers to 10 other applications (Geis, La Morte, Firman, D'Avola, Cohen, Daum, Kelly, Connors, Krauss, and Zalewski) wherein pension credits were based on the initiation dates "which dates were later than dates established²² by said applicants for having commenced their employment in covered employment from other evidence." As a result, the General Counsel asserts that the applicant was "granted fewer pension credits." Generally, the General Counsel contends that the initiation date, evidence of membership in the Teamsters was used by the Trustees to create a presumption of covered employment; that this was the same type of presumption, the Board found unlawful in *Nu-Car Carriers, supra*.

The General Counsel does not refer to the remainder of the 32 cases decided by the Trustees. It is considered essential that they as well as the ones referred to by the General Counsel be examined to determine whether in fact the operation of the Fund and the granting of pension credits were administered so as to violate the Act.

b. *Analysis of the 16 pre 1937 Applications*
*The General Counsel considered Not
Violative of the Act*

The General Counsel does not assert a violation of the Act in the case of 16 applications.

²¹ The General Counsel does not show how the playing of a "significant role" is violative of the Act.

²² This word was used by the General Counsel. Perhaps a better word is "asserted."

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With regard to five applications (Wild, Spinelli, Rocco, Basile and Kronen) pension credits were granted to the applicant to commence at a date later than that of his initiation date where employment records in the file showed that his employment started at the later date.²³

With regard to four applications (Howard, Tracey, Klepacki, and Zelenka) pension credits were granted to the applicant based on employment that commenced prior to the time of his initiation date.²⁴

With regard to five applications (Vukel, Mazza, La Rocca, Maj, and Thorp) pension credits were granted to applicants based on their employment records. The record contained no union initiation date.²⁵

With regard to Ubrico's application, pension credits were granted to him commencing with his union initiation date of October 25, 1927 which was later than the date that he commenced employment. The record includes Social Security records showing that Ubrico was employed by Century Transportation from 1937 forward. Also it contains Mangan's affidavit that Ubrico was working for Century from 1926 to 1936.²⁶

²³ The record shows that these conditions are the same as those for the 10 above wherein the General Counsel asserts a violation. The General Counsel does not distinguish these from the 10. In all 15, the pension credits started with the initiation date later than the employment date. Each received fewer credits.

²⁴ Apparently, the Trustees did not consider the initiation date the controlling factor.

²⁵ The record does not account for the lack of the initiation date. The record does show that all 32 applicants were union members.

²⁶ The General Counsel does not question this decision. It is noted that in this case as with the 15 mentioned above the initiation date was used for the commencement of pension credits and not an earlier employment date. The result was the same, a loss of pension credits.

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With regard to Caprio's application, pension credits were granted to him from March 1, 1932. His union initiation date was March 7, 1932. His employer had no record of employment for the period from 1932 to 1936. The record includes an affidavit of Mangan showing employment for that period.

Examination of the foregoing shows that the results obtained bear out the Trustees' statements that each application was handled on an individual basis. No set pattern of treatment is shown. The union record was included in the applicant's file and was considered as a factor in the determination process. In some cases, the initiation date was given more weight than in others. There is no showing, however, that the union record was used other than as evidence by the Trustees in making their decision.

c. *Analysis of 16 pre 1937 Applications*
The General Counsel considered
Violative of the Act

The next six cases to be dealt with are those first listed above by the General Counsel as violative of the Act.

With regard to Sloan's application, his file showed an employer letter stating he started work in 1935. Sloan was granted pension credits from July 1, 1935. His union initiation date was June 20, 1935. The record contains no explanation for the selection of the later date to commence Sloan's pension. In any event, this condition is the same as that of Wild, Spinelli, etc., in Section (b) above to which the General Counsel did not object. It may be that the union initiation date affected the choice of the later date

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but absent additional information the conclusion is not warranted. If the initiation date did affect the selection of the later date (which is not an improbable conclusion as a matter of regularity) then the reasoning applied to the next three cases is also applicable to Sloan with the same result.

With regard to three applications (Burke, Geyer and Woyzick) pension credits were granted to the applicants on the combined evidence of employment records and union records. Burke's file contained a letter showing he had been first employed during the early part of 1934. No specific date was indicated. Burke was granted pension credits starting with March 12, 1934, the union initiation date. Geyer's file contained a letter from the employer showing a date of hire in 1935. Again no specific date was included. Geyer was granted pension credits starting with December 14, 1935, the union initiation date. Woyzick's file contained a letter showing he started employment in 1927. No specific date was mentioned. Woyzick was granted pension credits starting with September 7, 1927, the union initiation date.

The record contains no explanation why the Trustees chose the initiation date in the last three cases. This decision does not pass in any way upon the rightness or wisdom of the Trustees' decisions. It deals only with that aspect of the administration of the Fund that is alleged to be violative of the Act. Viewed from the latter aspect, the Trustees' decisions are not considered unreasonable. The records before the Trustees as shown above contain no definite date of employment. For Fund purposes a par-

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ticular time must be fixed. To resolve this problem the Trustees selected the one item that reliably specified a time, the union initiation date. It could reasonably be concluded that as of that date each of the three applicants were or had started working for the specified employers. Such a decision undoubtedly gave significance to the union initiation date. In the opinion of the writer it did not give the date improper or illegal significance nor was its use to resolve a procedural problem discriminatory.

With regard to two applications (King and De Stefano) pension credits were granted as a result of the combined evidence of the application and the union records. King's application claimed employment from 1934 with R. R. Motor Haulage, Inc. No employer records could be obtained. The union record showed the name of his employer to be "R & R," and also, contained King's initiation date. King was granted pension credits from September 19, 1934 the initiation date. De Stefano was a case similar to King's. His application claimed employment by De Stefano Trucking in 1934. No employer records were obtainable. The union record showed that he had been employed by four trucking companies including De Stefano. Also, Social Security records showed De Stefano employed by De Stefano Trucking in 1937. De Stefano was granted pension credits commencing with September 6, 1934, his initiation date.

As with the three cases dealt with in the preceding paragraph, no explanation of the choice of initiation date is given. However, as in those cases, it appears from the combined records of the applicant and union that King and De Stefano started employment some indefinite time in

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1934. Accordingly, in the opinion of the writer the reasoning applied to the above three cases applies equally well to these two.

The next 10 cases are those listed by the General Counsel as violative of the Act because the consistent use of the initiation date to grant pension credits was based on a presumption of covered employment found illegal in *Nu-Car Carriers, supra*.²⁷

[16] The basis for the General Counsel's contention that the illegal presumption was used in all 10 cases is the testimony of Scotto, the Employer Trustee regarding the decision by the Trustees in the La Morte application, one of the 10 cases above mentioned. Following is a resume of the facts dealing with the La Morte decision.

La Morte's application claimed he started covered employment in 1928 with V. A. Maturo & Co., Inc. Included in the file was an affidavit from the company stating that

²⁷ A secondary argument of the General Counsel is that the initiation date being later than the employment date claimed by the applicant, there was a resultant loss of pension credits. This secondary argument is also rejected. This argument appears to be based on the premise that the Trustees should accept the employment date stated by the applicant in his application. Such a premise goes to the discretion and judgment of the Trustees in dealing with the evidence before them. That discretion is not subject to review by the Board except where it is shown to be violative of the Act. It is significant and patent that the Trustees did not accept the applicant's application as evidence of covered employment. Thus without the union records in those cases, the applicant would have been granted no pre 1937 pension credits. The use of the union records (including the initiation date) granted the applicant pension credits from the initiation date forward. In this manner, the applicant received more pension credits, not less as claimed by the General Counsel. This leaves for discussion the main contention of the General Counsel dealing with the illegal presumption.

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La Morte was a truck driver for the company from 1928 to 1945. Social Security records showed that V. A. Maturo was La Morte's employer commencing with 1937. La Morte was granted pension rights commencing with his union initiation date of October 15, 1936. Scotto testified that the Trustees made that determination because the facts before them showed "no evidence of covered employment." The Trustees did not accept the affidavit from V. A. Maturo standing alone.²⁸ The Trustees accepted La Morte's initiation date as evidence of covered employment because as Scotto stated "There's a presumption there that if he's a union member, there would be covered employment."

Examination of the remaining nine cases shows that the initiation date as shown in the union records was used by the Trustees to be the starting time for the commencement of pension credits. In granting pension credits the testimony of Scotto and the record as a whole shows that other evidence than the initiation date was also considered in making the determination.

Of the nine remaining cases, six show evidence in the application, of employment that preceded the union initiation date. The union record or other evidence shows similar data. The Trustees, however, used the initiation date as the commencement of the pension credits. No explanation for this action is given. The record data with regard to these six cases follows:

Geis' application claimed he started working for the William Geis Trucking Corp. in 1929. A letter from the com-

²⁸ The record does not give the reason for this action.

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pany stated he had started in 1926. The union record does not show any employer's name. Social Security records were not mentioned. Geis received pension credits commencing with his initiation date of September 7, 1934. The record contains no explanation for the use of the initiation date. No comment is made on the similarity of the names of the applicant and the company.²⁹

[77] Firman's application claimed he was employed by Hasman & Bartz, Inc., commencing from 1929 to 1942. Social Security records show that Herman & Bartz was his employer from 1937 forward.³⁰ No record of Firman's employment prior to 1935 was available. Firman received pension credits commencing with his union initiation date of April 9, 1935. Scotto testified that he did not recall what was considered by the Trustees in the determination of Firman's case.

Cohen's application claimed covered employment from 1923³¹ with a firm called J. Cohen & Bros., Inc. The union record showed his employer at the time he joined the union to be Cohen Bros. Social Security data was not shown. No employer records were available. Cohen was granted pension credits from June 20, 1929 the date of his union initiation.

Daum's application claimed employment by Daniels & Kennedy, Inc. from 1933 forward. Employer records did

²⁹ There is testimony in the record that owner-operators of trucking companies are not within covered employment.

³⁰ The Assistant Administrator testified that Social Security records were used as evidence of pre 1937 employment because of the factor of continuity of employment.

³¹ In another place in the record this date is shown as 1920.

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not cover employment from 1933 to 1936. Social Security records were not shown. The union record showed employment with "D & K." Daum was granted pension credits commencing with July 11, 1936, his union initiation date.

Connors' application claimed covered employment by Conboy Trucking Corp. beginning with 1926 or 1929. Social Security data was not shown. No employer records were available. His union record showed an employer "Conboy Tkg." Connors was granted pension rights commencing with October 1, 1934 his union initiation date.

Zalewski's application claimed covered employment from June 1, 1935 with L. T. Stevenson Co., Inc. No employment records were available. Social Security data was not shown. The union record showed that an employer was "L. T. Stevenson." Zalewski was granted pension credits commencing with November 4, 1935, his union initiation date.

The three remaining cases are set forth herein as the record shows the data concerning each:

D'Avola's application claimed covered employment from 1934 forward. No employer records were available. Social Security data was not shown. The record contains no other information as to the action taken by the Trustees except that D'Avola was granted pension credits commencing with January 1, 1935.³²

[/8] Kelly's application claimed covered employment with J. M. Walker & Sons from 1932 or 1933 to 1937. Soeial

³² In the summary the date that D'Avola became a union member is shown as "1935." The union record in evidence showed a date 11-5-35. No explanation of these items is contained in the record. This discrepancy casts some doubt on the fact that January 1, 1935 was D'Avola's initiation date.

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Security data was not shown. His union record shows employment as a driver with two firms other than Walker. No employer records were available. Kelly was granted pension credits from October 1, 1934, his initiation date.

Krauss' application claimed covered employment with the Geeham Trucking Company, from September 1930. Social Security data was not shown. No employer records were available. His union record showed another employer. Krauss was granted pension credits commencing September 7, 1934, his union initiation date.

*d. Conclusion that the Fund was not
Administered in Violation of the Act*

In view of Scotto's testimony in the La Morte case it is not unreasonable to conclude that the Trustees gave effect to the initiation date in the above applicants' files to create a presumption of having worked in covered employment. The Teamsters and the Party in Interest do not deny this. In their brief they state "In those instances where no employer records were available and the trustees were satisfied that the applicant worked in pre 1937 employment, the initiation date into Respondent union was used as the commencement date for past service credits . . . It represented the only prudent solution to a practical problem. The trustees . . . applied a common factor to each of those claims."

The General Counsel rightly states that "This is the same type of presumption which the Board found to be unlawful when embodied in a provision of a Pension Fund's rules and

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regulations in the *Nu-Car Carriers Case*.³³ The distinction between *Nu-Car* and this case is contained in his statement. The *Nu-Car Currier* decision forbids the inclusion of the presumption in the document establishing the Fund. It does not forbid the use of the presumption where necessary to determine a particular case when all the facts involved are considered including that presumption. What is proscribed in *Nu-Car* is the pre-establishment of the presumption as a matter of right. The subsequent use as a factor of evidence in the decision making process is not proscribed. The use of presumption is a valuable tool in making determinations.³⁴ Nothing has been shown in this case that the Trustees used the presumption of covered employment herein in a manner forbidden by the Act. The General Counsel has not shown that the presumption was invalid,³⁵ nor has he shown any particular case or cases wherein no evidence was considered but the initiation date of the applicant. As stated above and as an examination of the 32 cases shows, each case appears to have been resolved on its own merits. It turns out that the use of the initiation date benefits the union members. But it is not shown that such benefit is improper nor its use in making the pension credit grant improper. To a certain extent the existence of this presumption is a by-product of union membership or col-

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³³ In agreement with that decision as found above, the provision contained in the Teamsters Fund Agreement was found in violation of the Act.

³⁴ For example, presumption of regularity, failure to produce evidence, of continuity, of continuing majority, etc.

³⁵ To the contrary, taking into consideration the experience and knowledge of the Trustees it is concluded that the presumption is valid.

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lective bargaining which if not used improperly should not be denied a union member.³⁶ Accordingly, on the record as a whole it is found that it has not been shown that the pension fund has been administered by the Fund in a manner violative of the Act.

Upon the foregoing findings and the entire record, I make the following:

Conclusions of Law

1. Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, at all times material herein has been and is a labor organization within the meaning of Section 2(5) of the Act.
2. White Rock Beverages, Inc., at all times material herein has been and is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
3. Assertion of jurisdiction in this proceeding is proper.
4. By entering into an agreement with White Rock and other employers engaged in commerce for a pension fund containing the following sentence:

Consequently, anyone who was a member of Local 807 prior to the period commencing January 1, 1937 may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 806 during this period.

³⁶ See *Nu-Car Carriers, supra*, at pages 850 and 859.

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The Teamsters has restrained and coerced, and is continuing to restrain and coerce employees in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act, and has caused and attempted to cause and is continuing to cause and attempt to cause employers including White Rock to discriminate against employees in violation of Section 8(a)(3) of the Act, thereby violating Section 8(b)(2) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[20] 6. The Teamsters has not engaged in any violation of the Act in the actual administration of the Fund.

The Remedy

Having found that the Teamsters has engaged and are engaging in unfair labor practices, it is recommended that Teamsters be required to cease and desist therefrom and post appropriate notices in effectuation of the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:³⁷

³⁷ In the event no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

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ORDER

Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives on the Pension Fund of the N. Y. C. Trucking Industry—Local 807, shall:

1. Cease and desist from:

- (a) In any manner subscribing or being party to, maintaining, supporting, or participating in the Pension Program or Pension Fund established by or arising out of or in relation to a certain Agreement and Declaration of Trust, dated December 1, 1950, or other instrument, as reflected or implemented in any Rules and Regulations, or practices, adopted or followed thereunder, insofar and so long as any thereof (1) provide or allow service credits for pension purposes based upon or arising out of union membership, or (2) provide or allow service credits for pension purposes based upon union membership as establishing or supporting a finding or conclusion, or employment under a collective agreement cognizable for pension entitlement purposes in whole or in part, or (3) provide or allow service credits on any other basis discriminatorily in violation of the National Labor Relations Act, so as to favor union members over nonunion employees employed under the same collective agreement or in the same collective bargaining unit as such union members.
- (b) In any manner causing White Rock Beverages, Inc., or any other employer engaged in commerce, through con-

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tribution to, solicitation or request to contribute to, or participate in such Pension Program, Plan, or Fund, to discriminate against employees so as to encourage or discourage union membership or otherwise so as thereby to violate Section 8(a)(3) of the Act.

[21]

(c) In any like or related manner (1) violating Section 8(b)(1)(A) or (2) of the Act, or (2) causing White Rock Beverages, Inc., or any other employer engaged in commerce to violate Section 8(a)(3) of the Act, or (3) restraining or coercing employees in the exercise of any rights guaranteed in Section 7 of the Act.

2. Take the following affirmative actions, which are necessary to effectuate the policies of the Act:

(a) Forthwith transmit to the Trustees of the Pension Fund of the N. Y. C. Trucking Industry—Local 807 copies of this Decision and take the necessary steps to implement the requirements of this Order.

(b) Post at its business offices and meeting places, and cause to be posted at the premises of the Pension Fund, copies of the Notice attached hereto marked "Appendix." ³⁸ Copies of said Notice, on forms provided by the Regional Director for the 29th Region, shall be duly signed and posted immediately upon receipt thereof and maintained

³⁸ In the event the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

*Decision of Administrative Law Judge
Benjamin A. Theeman*

for 60 consecutive days thereafter in conspicuous places, including all places where notices to members and to Pension Fund applicants are customarily posted. Reasonable steps shall be taken to insure said Notice is not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the 29th Region in writing, within 20 days from receipt of this Decision and Recommended Order, what steps have been taken to comply therewith.⁸⁰

IT IS FURTHER ORDERED that the complaint be dismissed as to the allegations not found herein to be unfair labor practices. In keeping with the foregoing, the motions to dismiss the complaint are denied and the affirmative defenses alleged are found inadequate. The contention is not valid that the Article III, Section 2(a) cannot be considered to encourage or discourage membership in any labor organization within the meaning of Section 8(a)(3) because it relates to the period prior to January 1, 1937. The rationale for this conclusion is laid out in *Nu-Car Carriers, supra*, at page 863 and the cases cited in fn. 3, page 851.

Dated at Washington, D. C.

/s/ BENJAMIN A. THEEMAN
Benjamin A. Theeman
Administrative Law Judge

⁸⁰ The remedy and order herein are based on those contained in *Nu-Car Carriers, supra*.



NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A TRIAL IN WHICH ALL SIDES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENTS, THE NATIONAL LABOR RELATIONS BOARD HAS DECIDED THAT THIS UNION HAS VIOLATED THE NATIONAL LABOR RELATIONS ACT BY BEING A PARTY TO, MAINTAINING, AND PARTICIPATING IN A PENSION PROGRAM AND FUND WHICH UNLAWFULLY DISCRIMINATES IN FAVOR OF PERSONS WHO WERE MEMBERS OF A TEAMSTERS UNION PRIOR TO JANUARY 1, 1937. THE NATIONAL LABOR RELATIONS BOARD HAS ACCORDINGLY ORDERED US TO DISCONTINUE THIS FEATURE OF THE PENSION PROGRAM AND FUND TO POST THIS NOTICE.

WE WILL NOT subscribe or be a party to, maintain, support, or participate in any Pension Program, Plan, or Fund which, in violation of the National Labor Relations Act, discriminatorily favors past or present Union members in the award of service credits or otherwise in connection with qualifying for pensions.

WE WILL NOT in any way cause an employer including, WHITE ROCK BEVERAGES, INC., through contribution to or participation in any such Pension Program, Plan, or Fund, to discriminate against employees so as to encourage or discourage Union membership, in violation of the National Labor Relations Act.

WE WILL NOT in any like or related manner restrain or coerce any employee in the exercise of any of his rights under the National Labor Relations Act.

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA

(Labor Organization)

Dated _____ By _____
(Representative) _____ (Title) _____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, N. Y. 11241 (Tel. No. 212 - 596-3750).

Exceptions to the Administrative Law Judge's Decision

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

[CAPTIONS OMITTED]

Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Respondent herein, and Pension Fund of the New York City Trucking Industry—Local 807, Party in Interest, take exceptions to the Administrative Law Judge's Decision in the following respects:

1. To the finding [Administrative Law Judge's Decision (JD), p. 5, 7-13] that:

"The General Counsel asserts that the language in each charge 'By these and other acts, the above named labor-organization has restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act,' supports the issuance of the complaint. There is merit to the General Counsel's position. The motion to dismiss based on the inadequacy of the charge is denied."

2. To the finding [JD, p. 5, 25-35] that:

"By examination it can be seen that the violation of the complaint allegation is not far removed from but is of the same class as the specific allegation in the com-

Exceptions to the Administrative Law Judge's Decision

plaint. Both refer to a preference to union members based on union membership. *Southern Materials Company, Inc., etc.*, 181 NLRB 958 fn. 1. Thus, there appears little doubt that the action referred to in the complaint allegation is sufficiently 'closely related'⁴ to the specific charge allegations as to come within the scope of the 'By these and other acts' language of the charge. Under such circumstances it cannot be said that the Regional Director has issued a complaint on his own initiative as he is forbidden to do by Section 10(b) of the Act. *Great Plains Steel Corp.*, 183 NLRB No. 96 and cases cited therein.⁵

3. To the finding [JD, p. 5, 38-44] that:

"Further, it is noted that the Teamsters and the Party in Interest were given notice that further proceedings were contemplated. The Regional Director's letter refusing to issue complaint contained the sentence 'The remaining portions of your charge are being processed further.' The letter denying the appeal stated that Section 8(b)(1)(A) violations were being processed based on illegal provisions of the pension fund agreement."

4. To the finding [JD, p. 7, 29-31] that:

"Section 2(a) in effect separates pre-1937 applicants into two classes (1) members of the Union prior to January 1, 1937 (2) non-members of the Union prior to January 1, 1937."

Exceptions to the Administrative Law Judge's Decision

5. To the finding [JD, p. 7, 31-35] that:

"As written Section 2(a) grants two advantages to the Union member employee over the nonunion-member employee: (1) it increases the probabilities of a Union member to get pension credits; (2) it increases the burden of proof of the nonunion-member."

6. To the finding [JD, p. 7, 37-47, p. 8, 1-14] that:

"These advantages are shown by the following example which reduces the language of Section 2(a) to the simplest possible situation. During the year 1934 to 1937 two applicants were employed by Employer X and Employer Y respectively. Applicant one was a union member. Applicant two was nonunion. Employer X and Y and their records are no longer existent. No other confirmation or record concerning covered employment is available than the statement by each applicant of his employment. Section 2(a) is applicable to such a set of facts. It provides that under such circumstances, ' . . . anyone who was a member of Local 807 prior to the period commencing January 1, 1937 may, at the sole discretion of the Trustees, be given a year of Pension Credit for each year he was a member of Local 807 during this period.' It is reasonable to conclude that absent other facts the Trustees will exercise their discretion in favor of granting the pension credits to the union member.⁸ But regardless of what occurred or might occur in practice, and looking only to the language itself as written it is clear that a union member's probabilities of receiving pre-

Exceptions to the Administrative Law Judge's Decision

1937 pension credits are greater than those of a non-union member. For under its terms the union member is in a position to receive pension credits where a non-union member may not. Under the terms of the Pension Fund the pre 1937 credits are worth at least \$10.00 a month additional for each year of pension credit. This payment is not considered insubstantial an arrangement wherein only union members receive this advantage is also not insubstantial. Between the union and nonunion members under such circumstances, the language of Section 2(a) makes that value available only to Teamster members."

7. To the finding [JD, p. 8, 16-28] that:

"As written Section 2(a) sets up two unequal standards of proof of covered employment. Under the given situation the union member is in a position to rely on his union membership to support his application. The non-union member cannot do so. Lacking this support the nonunion member is required to exercise extraordinary efforts to obtain confirmatory proof. It follows that the nonunion member's burden of proving his claim is heavier than the union members. Certainly this distinction creates an advantage for the union members. . . . To the extent of an easier burden of proof the union member was given an advantage over the non-union member because of his union membership. To that extent also Section 2(a) discriminated against nonunion members.⁹"

Exceptions to the Administrative Law Judge's Decision

8. To the finding [JD, p. 9, 4-18] that:

"Such non-discriminatory administration does not dissipate the inherent impropriety of Section 2(a). As was stated in the concurring opinion in *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. NLRB*, 365 U.S. at page 678:

'The mere existence of a clause that on its face appears to declare preferential rights for union members encourages union membership among employees or job applicants, persons not privy to the undisclosed intent of the parties, yet affected by the apparent meaning of the contract. Hence the mere possibility that such a clause may actually turn out not to have been administered by the parties so as to favor union members is not enough to save it from condemnation as an unlawful discrimination'."

9. To the finding [JD, p. 9, 20-29] that:

"The favorable probabilities and advantages for union members found above arose out of the terms and conditions of the collective bargaining agreement between the Teamsters and employer contributors to the Pension Fund.¹² Thus, they are a condition of employment affecting the employees of the trucking industry. To the extent that these conditions advantage union members and disadvantage nonunion members they do violence to the purposes of the Act. Accordingly, it is found that the language of Article III, Section 2(a) as

Exceptions to the Administrative Law Judge's Decision

written violates Section 8(b)(1)(A) and (2) and Section 8(a)(3) and (1) of the Act. Cf. *Nu-Car Carriers*, *supra*, at page 851 and 861 and cases cited therein."

10. To the finding [JD, p. 13, 44-46] that:

"In all 15, the pension credits started with the initiation date later than the employment date."

11. To the finding [JD, p. 18, 17-20] that:

"In view of Scotto's testimony in the La Morte case it is not unreasonable to conclude that the Trustees gave effect to the initiation date in the above applicants' files to create a presumption of having worked in covered employment. The Teamsters and the Party in Interest do not deny this."

12. To the finding [JD, p. 18, 29-32] that:

"The General Counsel rightly states that 'This is the same type of presumption which the Board found to be unlawful when embodies in a provision of a Pension Fund's rules and regulations in the *Nu-Car Carriers Case*.'

13. To the finding [JD, p. 18, 46-47] that:

"In agreement with that decision as found above, the provision contained in the Teamsters Fund Agreement was found in violation of the Act."

14. To the finding [JD, p. 19, 3-4] that:

"It turns out that the use of the initiation date benefits the union members."

Exceptions to the Administrative Law Judge's Decision

15. To the finding [JD, p. 19, 6-8] that:

"To a certain extent the existence of this presumption is a by-product of union membership or collective bargaining which if not used improperly should not be denied to a union member.³⁶"

16. To the Conclusions of Law numbered 4 and 5 [JD, p. 19, 29-46].

17. To the entire proposed Remedy and the entire recommended Order of the Administrative Law Judge [JD, pp. 20-21].

Respectfully submitted,

J. WARREN MANGAN, Esq.

ARTHUR LIBERSTEIN

ZELBY, BURSTEIN, LIBERSTEIN,
& HARTMAN, Esqs.

Decision and Order

207 NLRB No. 47

JKP

D-8074

Long Island City, N. Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

[CAPTIONS OMITTED]

On July 16, 1973, Administrative Law Judge Benjamin A. Theeman issued the attached Decision in this proceeding.¹ Thereafter, the General Counsel and the Respondent filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Ad-

¹ Pension Fund of New York City Trucking Industry Local 807 was represented at the hearing as Party in Interest.

² While the Administrative Law Judge's Decision does not proscribe using membership in a labor organization as a factor in determining eligibility for pension credits, his recommended Order appears to do so. Accordingly, we have modified the order to accurately reflect the Administrative Law Judge's conclusions.

Decision and Order

ministrative Law Judge, as modified below, and hereby orders that the Respondent, Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Long Island City, New York, its officers, agents, and representatives on the Pension Fund of New York City Trucking Industry Local 807, shall take the action set forth in the said recommended Order, as modified below.

1. Delete paragraph 1(a) of the recommended Order and substitute the following:

“(a) In any manner subscribing or being party to, maintaining, supporting, or participating in the pension program or pension fund established by or arising out of or in relation to a certain agreement and declaration of trust, dated December 1, 1950, or other instrument, as reflected or implemented in any rules and regulations, or practices, adopted or followed thereunder, insofar and so long as any thereof (1) provide or allow service credits for pension purposes based upon or arising out of union membership, or (2) provide or allow service credits on any other basis discriminatorily in violation of the National Labor Relations Act, so as to favor union members over nonunion employees employed under the same collective agreement or in the same collective-bargaining unit as such union members.”

Dated, Washington, D. C., Nov. 13, 1973

HOWARD JENKINS, JR., Member

RALPH E. KENNEDY, Member

JOHN A. PENELLO, Member

National Labor Relations Board

(SEAL)

**Petition to Review and Set Aside an Order
of the National Labor Relations Board**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Case #74-1001

TRUCK DRIVERS LOCAL UNION No. 807, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

*To the Honorable, the Judges of the United States Court of
Appeals for the Second Circuit:*

Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended, 29 U.S.C.A. 152 (5), pursuant to Section 10(f) of the National Labor Relations Act, as amended, 29 U.S.C.A. 160(f) and Rule 15 F.R.A.P., 28 U.S.C.A., respectfully petitions this Court to review and set aside an Order of the National Labor Relations Board in a proceeding entitled: Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and George Lightfoot, an

*Petition to Review and Set Aside an Order
of the National Labor Relations Board*

Individual, Anthony Palumbo, an Individual, Tony Greco, an individual and White Rock Beverages, Inc., Party to the Contract, being numbered by the National Labor Relations Board as Case No. 29-CB-1352 (1-2-3).

In support of this petition the Petitioner respectfully shows:

(1) Petitioner maintains its office and transacts business in the City and State of New York within this jurisdictional circuit. This Court therefore has jurisdiction by virtue of Section 10(f) of the National Labor Relations Act.

(2) Lightfoot, Palumbo and Greco each filed a Charge with the National Labor Relations Board in October, 1972 alleging that the Petitioner unlawfully denied them pension benefits because of non-membership in the Petitioner. The Regional Director for the Twenty-Ninth Region of the National Labor Relations Board refused to issue a Complaint against Petitioner on these allegations. A Complaint was nevertheless issued against the Petitioner on December 15, 1972. On April 30 and May 1, 1973, a hearing on said Complaint was held before an Administrative Law Judge of the National Labor Relations Board. On July 16, 1973 the Administrative Law Judge's Decision issued in which he found that Petitioner violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act. On November 13, 1973, the National Labor Relations Board, pursuant to a delegated three-member panel, issued a Decision and Order in which it sustained in full the findings of fact and conclusions of law of the Administrative Law Judge and adopted his recommended order, as modified.

*Petition to Review and Set Aside an Order
of the National Labor Relations Board*

WHEREFORE, the Petitioner prays

- (a) That the Honorable Court cause notice of the filing of this Petition to Review to be served upon the Respondent, and
- (b) that the Court direct the National Labor Relations Board to certify and file with this Court, as provided in 28 U.S.C.A. 2112, a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceedings before the National Labor Relations Board in Case No. 29-CB-1352 (1-2-3); and
- (c) that this Court take jurisdiction of the proceedings and the questions determined therein and make and enter a decree setting aside and vacating that portion of the said Decision and Order of the National Labor Relations Board wherein it is concluded that the Petitioner has violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act.

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

by J. WARREN MANGAN

J. Warren Mangan, Esq.

32-43 49th Street

Long Island City, New York 11103

726-6009

**Cross-Application for Enforcement of an Order
of the National Labor Relations Board**

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 74-1001

TRUCK DRIVERS LOCAL UNION No. 807, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,

Petitioner,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

*To the Honorable, the Judges of the United States Court of
Appeals for the Second Circuit:*

On January 2, 1974, pursuant to Section 10(f) of the National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, et seq.), Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, instituted the captioned proceeding by filing with this Court a petition to review and set aside an order issued against it by the National Labor Relations Board on November 13, 1973, in a case appearing on the records of the Board as Case Nos. 29-CB-1352-1, 29-CB-1352-2 and 29-CB-1352-3.

*Cross-Application for Enforcement of an Order
of the National Labor Relations Board*

Pursuant to Section 10(f) of the Act and Section 15(b) of the Federal Rules of Appellate Procedure, the Board files this cross-application for enforcement of said order.

In support of this cross-application, the Board respectfully shows:

- (1) The Petitioner is a party aggrieved by a final order of the Board. This Court therefore has jurisdiction of this cross-application for enforcement by virtue of Section 10(f) of the National Labor Relations Act, as amended.
- (2) Upon due proceedings had before the Board in said matter, the Board on November 13, 1973, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Petitioner, its officers, agents and representatives. On the same date, the Board's Decision and Order was served upon the Petitioner by sending a copy thereof postpaid, bearing Government frank, by registered mail, to the Petitioner.
- (3) Pursuant to Section 10(f) of the National Labor Relations Act, as amended, and Rule 17 of the Federal Rules of Appellate Procedure, the Board is certifying and filing with this Court a list of documents, pleadings, and materials comprising the entire record of the proceeding before the Board as well as the findings and order of the Board in Case Nos. 29-CB-1352-1, 29-CB-1352-2, 29-CB-1352-3.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this cross-application and transcript to be served upon the Petitioner and that this Court take jurisdiction of the proceeding and of the ques-

*Cross-Application for Enforcement of an Order
of the National Labor Relations Board*

tions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a judgment enforcing in whole said Order of the Board, and requiring the Petitioner, its officers, agents and representatives, to comply therewith.

/s/ ELLIOTT MOORE
Elliott Moore
Deputy Associate General Counsel
National Labor Relations Board

Dated at Washington, D.C.,
February 8, 1974